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Title: Asahi Metal Industry Co., Ltd., Petitioner
v.
Superior Court of California, Solano County, etc.

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tober 22, 1985

Court: Supreme Court of California

Counsel for petitioner: Staring, Graydon S.

Counsel for respondent: Haven, Ronald R.

try	Date	Note	Proceedings and Orders
1	Oct 22 1985	G	Petition for writ of certiorari filed.
3	Nov 18 1985		Order extending time to file response to petition until December 23, 1985.
4	Dec 20 1985		Brief of respondent Superior Court of CA in opposition filed.
5	Dec 30 1985		DISTRIBUTED. January 17, 1986
6	Jan 6 1986	X	Reply brief of petitioner Asahi Metal Industry Co. filed.
8	Jan 21 1986		REDISTRIBUTED. January 24, 1986
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4	Mar 3 1986		petition GRANTED. *****
5	Apr 15 1986		Brief amicus curiae of Alcan Alumino Do Brasil, S.A. filed.
6	Apr 17 1986		Brief amicus curiae of Cassiar Mining Corporation filed.
7	Apr 17 1986		Brief amicus curiae of American Chamber of Commerce in the UK, etc. filed.
8	Apr 17 1986		Joint appendix filed.
9	Apr 17 1986		Brief of petitioner Asahi Metal Industry Co. filed.
0	Apr 23 1986		Record filed.
2	May 16 1986		Brief amicus curiae of California Manufacturers Assn. filed.
3	May 19 1986		Brief of respondent Superior Court of CA filed.
4	Jun 23 1986	D	Motion of California Manufacturers Association for leave to participate in oral argument as amicus curiae and for divided argument filed.
5	Jul 25 1986		CIRCULATED.
6	Sep 3 1986		Motion of California Manufacturers Association for leave to participate in oral argument as amicus curiae and for divided argument DENIED.
7	Sep 3 1986		SET FOR ARGUMENT. Wednesday, November 5, 1986. (4th case) (1 hour)
8	Oct 28 1986	X	Reply brief of petitioner Asahi Metal Industry Co. filed.
9	Nov 5 1986		ARGUED.

85-693

No.

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OCT 22 1985

JOSEPH F. SPANIOLO, JR.
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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1985

ASAHI METAL INDUSTRY CO., LTD.
Petitioner,

VS.

SUPERIOR COURT OF CALIFORNIA
IN AND FOR THE COUNTY OF SOLANO
(CHENG SHIN RUBBER INDUSTRIAL CO., LTD.,
REAL PARTY IN INTEREST)
Respondent.

**PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE
STATE OF CALIFORNIA**

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QUESTIONS PRESENTED

Where a Taiwanese manufacturer marketing its products world-wide contracts for component parts overseas from a Japanese manufacturer which does not engage in any business activity in California, or in the United States, and sues the latter in a California court for indemnity on account of a product liability claim:

1. Is the mere awareness of the Japanese manufacturer that a substantial number of the Taiwanese manufacturer's finished products are sold in California adequate to establish the requisite contacts¹ giving the California court personal jurisdiction over it?
2. Is the requisite interest of the State of California² established by the declared intention of the California Supreme Court to apply California law to the relationship and transactions of the two alien manufacturers³ and by the

¹ *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945); *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 291 (1980).

² *McGee v. International Life Ins. Co.*, 355 U.S. 220, 223 (1957); *World-Wide Volkswagen* at 292.

³ Appendix C-16.

assertion of a consequent interest in the orderly administration of California laws?⁴

Subsidiary included questions are noted in the margin.⁵

⁴ Cf. Appendix C-16 with *International Shoe* at 319; *World-Wide Volkswagen* at 297.

⁵ Subsidiary and more particular questions raised by the decision below are:

(a) By selling parts with the awareness that some finished product would be sold in California, did the alien component manufacturer purposefully avail itself of the "benefits and protections" of California laws (cf. Appendix C-11 with *Hanson v. Denckla*, 357 U.S. 235, 253 (1958); *World-Wide Volkswagen* at 297) so that it should have expected to be haled into court in California because of the interest expressed by California in taking jurisdiction and applying California law? (cf. Appendix C-11 with *Kulko v. California Superior Court*, 436 U.S. 84, 97-98 (1978); *Shaffer v. Heitner*, 433 U.S. 186, 216 (1977); *World-Wide Volkswagen* at 297);

(b) Is sale to a manufacturer with awareness that one's product will be incorporated into products some of which will be sold in California the equivalent of conducting sales in California for jurisdictional purposes? (see Appendix C-15);

(c) Was the sale of the component parts to the manufacturer delivery "into the stream of commerce with the expectation that they will be purchased by consumers in the forum State"? (cf. Appendix C-12, fn. 7 with *World-Wide Volkswagen* at 298); and

(d) Is the sale of the finished product in California the unilateral activity of another which "cannot satisfy the requirement of contact with the forum state"? (cf. Appendix C-12, fn. 7 with *Hanson* at 253 and *World-Wide Volkswagen* at 298).

PARTIES TO THE PROCEEDING

All parties to the proceeding in the Supreme Court of the State of California are named in the caption.

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No.

In the Supreme Court

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OCTOBER TERM, 1985

ASAHI METAL INDUSTRY CO., LTD.

Petitioner,

VS.

SUPERIOR COURT OF CALIFORNIA
IN AND FOR THE COUNTY OF SOLANO
(CHENG SHIN RUBBER INDUSTRIAL CO., LTD.,
REAL PARTY IN INTEREST)
Respondent.

PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE
STATE OF CALIFORNIA

Petitioner prays that a writ of certiorari issue to review the final order of the California Supreme Court entered in this case on July 25, 1985.

OPINIONS BELOW

The decision of the Court of Appeal of the State of California was originally reported at 149 Cal. App. 3d 30, 194 Cal. Rptr. 741, but was subsequently decertified for publication when the Supreme Court of California granted a petition for hearing and is reproduced in Appendix B *infra*. The opinion of the California Supreme Court and dissenting opinion are reported at 39 Cal. 3d 35, 216 Cal. Rptr. 385, and reproduced in Appendix C, *infra*.

JURISDICTION

By a final order of July 25, 1985 entered the same date, the Supreme Court of the State of California denied Petitioner's Petition for Writ of Mandate directing the Superior Court for the County of Solano, State of California to quash summons and complaint served on Petitioner and discharged an alternative writ which had previously been issued by the Court of Appeal, State of California, First Appellate District. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. section 1257(3).

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

California Code of Civil Procedure section 410.10 states:

A court of this state may exercise jurisdiction on any basis not inconsistent with the Constitution of this state or of the United States.

The provision of the United States Constitution involved is the Due Process Clause of the Fourteenth Amendment:

Section 1. . . . nor shall any State deprive any person of life, liberty, or property, without due process of law; . . .

STATEMENT OF THE CASE

A California resident was killed and another injured in a motorcycle accident in California. It was claimed that the accident was caused by a sudden loss of air and explosion in the rear tire of the motorcycle. (Appendix C-1.)

In consequence a products liability action was filed in California alleging that the motorcycle tire, tube and sealant were defective. The complaint named Cheng Shin Rubber Industrial Co., Ltd. (Cheng Shin), the Taiwanese manufacturer of the tube and other defendants. Cheng Shin, in turn, filed a cross-complaint seeking indemnity from various of its co-defendants and also from Asahi Metal Industry Co., Ltd. (Asahi), the Japanese manufacturer of the tube's valve assembly. (Appendix C-1-2.) Asahi was never named as a defendant by the California plaintiff. (Appendix B-1.) The case against Cheng Shin and the other defendants was settled and dismissed. (Appendix C-16, fn. 9.)

Asahi challenged the jurisdiction of the Superior Court of the State of California for the County of Solano to exercise jurisdiction over it for the indemnity claims of Cheng Shin by moving to quash service of summons, on the ground that California's exercise of jurisdiction over it would offend the limitations on the State's jurisdiction imposed by the Due Process Clause of the Fourteenth Amendment. The Superior Court denied the motion by an order asserting California jurisdiction. (Appendix A.)

Asahi then sought and obtained a Writ of Mandate from the Court of Appeal of the State of California ordering the Superior Court to quash service of summons and complaint on Asahi. The Court of Appeal, relying upon this Court's decision in *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980), and the California Supreme Court's decision in *Secrest Machine Corp. v. Superior Court*, 33 Cal. 3d 664 (1983), concluded that it would not be reasonable to require Asahi to respond to an indemnity claim in California and that it would not be fair and reasonable for a California court to exercise jurisdiction. (Appendix B-5-6). The Supreme Court of California then granted a hearing. The effect of the grant was to vacate the decision of the Court of Appeal and

place the case before the Supreme Court in the same posture as it had been submitted to the Court of Appeal.

The following facts are those relied on or acknowledged by the Court of Appeal and the Supreme Court of California in reaching their decisions.

Asahi is a Japanese corporation. It has no offices, property or agents in California. It solicits no business and makes no sales here. (Appendix C-10.) It maintains no spare parts and gives no advice on maintenance, sales, or use in California. It does not advertise in California. It has conducted no deliberate economic acts to serve the tire market in California. (Appendix B-3.) In short, it does not do business in California.

Asahi manufactures valves for tires. Asahi has from time to time in the last ten years sold tire valves for use on motorcycle tire tubes to Cheng Shin in Taiwan and to other alien corporations. Between 1978 and 1982 Asahi sold 1,350,000 valve stem assemblies to Cheng Shin. Sales of tire valves to Cheng Shin in Taiwan in 1981 accounted for 1.24 percent of Asahi's total income for that year. Sales of tire valves to Cheng Shin in Taiwan in 1982 accounted for 0.44 percent of Asahi's total income for 1982. (Appendix C-2.) All of the sales of tire valve assemblies to Cheng Shin occurred in Taiwan. All of the shipments were sent from Japan to Taiwan. (Appendix B-2.)

Asahi is not Cheng Shin's exclusive supplier of valve assemblies. Cheng Shin purchases valve assemblies from other suppliers and markets its finished product throughout the world. Tubes sold in California (and presumably the United States) are marketed by Cheng Shin through a related company, Cheng Shin Tire USA, Inc., a California corporation. Approximately 20% of Cheng Shin's total United States sales (an unknown number) are in California. (Appendix B-2-3.)

Asahi "did not design or control the system of distribution that carried its valve assemblies into California." (Appendix C-11.) However Asahi knew that Cheng Shin sold its tubes throughout the world and the United States, having acquired this knowledge from Cheng Shin. (Appendix C-10, fn. 4.) Thus Asahi was aware of the probability that some of the tire valve assemblies it sold to

Cheng Shin in Taiwan would end up in California. (Appendix C-10, fn.4.)

The Supreme Court of California reversed the Court of Appeal and denied the writ. This had the effect of reinstating the Superior Court's Order denying Asahi's Motion for an Order Quashing Service of Summons and Cross-Complaint. The California Supreme Court, after acknowledging that jurisdiction could only be exercised against a nonresident defendant if minimum contacts with the State existed, concluded that California could exercise jurisdiction against Asahi for the indemnity claims of Cheng Shin because Asahi was aware that a substantial number of its products would be sold in the forum State. The Court specifically held that:

[T]his court finds that the minimum contacts requirement is satisfied where, as here, the manufacturer is aware that a substantial number of its products will be sold in the forum state. [Appendix C-15.]

REASONS FOR GRANTING THE WRIT

A writ of certiorari should be granted because the Supreme Court of California has:

1. Decided a federal question in this case in a way in conflict with decisions of this Court or, in the alternative, decided an important question of United States constitutional law which has not been, but should be, settled by this Court; and
2. Decided a federal question in this case in conflict with decisions on the same matter of federal courts of appeals.

I. Background of the Questions

In *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980), this Court reestablished that there are territorial limitations imposed by the United States Constitution on asserting jurisdiction over nonresident defendants in products liability actions and held that as a threshold consideration to any exercise of state court jurisdiction a nonresident defendant must

have certain "contacts, ties or relations" with the forum state. 444 U.S. at 291-92, 294. This Court further rejected the trend of state and federal court decisions which focused initially and primarily on the reasonableness or fairness of requiring the nonresident defendant to litigate in a distant or inconvenient forum (444 U.S. at 294) and on decisions that premised jurisdiction in product liability actions on precepts of foreseeability. (444 U.S. at 295-99.)

In *World-Wide Volkswagen* this Court reiterated the additional requirement of a showing of the forum state's interest in adjudicating the dispute (444 U.S. at 292). In previous decisions this Court had held that there are Due Process limitations on the application of the law of the forum state to foreign controversies⁶ and that the requisite interest of the forum state cannot be shown by deciding in advance that the law of the forum state should apply to the dispute.⁷

Since *World-Wide Volkswagen* was decided, state and federal courts have sought to apply its teachings with mixed results. In the factual context of *World-Wide Volkswagen*, where the manufacturer of the product or its component parts is not involved, most courts have had no difficulty applying the standards set forth in *World-Wide Volkswagen*. However, where a nonresident manufacturer of the product, or the product's component parts, has claimed that it is not subject to jurisdiction in the forum state, mixed results have followed premised on varying analyses.

The major source of state and federal courts' apparent confusion stems from this Court's dictum in *World-Wide Volkswagen* that "[t]he forum State does not exceed its powers under the Due Process Clause if it asserts personal jurisdiction over a corporation that delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the

⁶ E.g., *Home Insurance Co. v. Dick*, 281 U.S. 397 (1930); *Allstate Insurance Co. v. Hague*, 449 U.S. 302 (1981).

⁷ *Hanson v. Denckla*, 357 U.S. 235, 253 (1958); *Shaffer v. Heitner*, 433 U.S. 186, 216 (1977); *Kulko v. California Superior Court*, 436 U.S. 84, 98 (1978).

forum State." 444 U.S. at 297-98. Despite the clear import of *World-Wide Volkswagen* that all nonresident defendants must have "contacts, ties or relations" with a forum state before personal jurisdiction may be asserted over them, many state and federal courts have interpreted *World-Wide Volkswagen's* dictum to mean that all manufacturers of products and their component parts who are aware that their products will be sold elsewhere are subject to personal jurisdiction everywhere that the products are sold. Thus, no threshold inquiry is conducted to ensure that the states do not exceed the territorial limitations imposed upon them by the Due Process Clause of the Constitution and, accordingly, nonresident defendants become subject to personal jurisdiction where their conduct in connection with the forum state is such that they do not reasonably anticipate being haled into court there, where they do not purposefully avail themselves of the privilege of conducting activities within the forum state or invoke the protection of its laws, and where the unilateral activity of those who have some relationship with the nonresident defendant is the only contact the nonresident has with the forum state.

The California Supreme Court in *Asahi* returned to the rejected concepts of foreseeability as the test for imposing jurisdiction against nonresident defendants, by articulating a standard of analysis which equates awareness with the minimum contacts requirement and holds that "the minimum contacts requirement is satisfied where, as here, the manufacturer is aware that a substantial number of its products will be sold in the forum state." (Appendix C-15.) The court further permitted the unilateral activity of others (Cheng Shin) to be imputed to Asahi and to serve as the basis of holding that Asahi had purposefully availed itself of the privilege of conducting activities within California. (Appendix C-12-13, fn. 7.) Finally, it based its finding of the State's interest on the assertion that the law of California should be applied to the dispute. (Appendix C-16.)

II. The Decision of the California Supreme Court Is in Conflict with Decisions of This Court.

A. The Decision Improperly Reinstates a Foreseeability Test as a Benchmark for Imposing Jurisdiction

World-Wide Volkswagen established a two-prong analysis for determining when a state may exercise personal jurisdiction over a nonresident defendant. As an initial and threshold consideration the nonresident defendant must have judicially cognizable "contacts, ties, or relations" with the forum state. (444 U.S. at 295-296.) If such contacts exist, then it must also be determined that the exercise of jurisdiction is fair and reasonable. (444 U.S. at 292-94.) Claims that jurisdiction could constitutionally be premised on concepts of foreseeability were rejected. The mere likelihood that a product would find its way into the forum state was not a sufficient basis to exercise jurisdiction over a nonresident. (444 U.S. at 295.) Similarly, the fact that a nonresident earned substantial revenue from goods used in the forum state could not, of itself, support jurisdiction. This Court, deeming the contrary argument to be a variant of the rejected foreseeability argument, stated that:

financial benefits accruing to the defendant from a collateral relation to the forum state will not support jurisdiction if they do not stem from a constitutionally cognizable contact with that State. [444 U.S. at 299.]

The California Supreme Court in *Asahi* determined that Asahi was subject to California jurisdiction by employing the precise analysis rejected by this Court in *World Wide Volkswagen*. Instead of holding that Asahi was subject to California jurisdiction because it was foreseeable that Cheng Shin's tires with Asahi's valves would be found in California, the California Supreme Court held that Asahi was subject to California jurisdiction because it was "aware that a substantial number of its products will be sold in [California]." (Appendix C-15.) In a real sense the California Supreme Court merely substituted "awareness" for "foreseeability" and employed an impermissible constitutional basis for exercising jurisdiction over Asahi. Thus, as a

primary matter, the *Asahi* decision is in conflict with this Court's standard for analyzing jurisdiction cases.

B. The Decision Exercises Jurisdiction Based Upon the Unilateral Activities of Others

The California Supreme Court's conflict with this Court is not limited to its revitalization of the concept of foreseeability. Although *Asahi* "did not design or control the system of distribution that carried its valve assemblies to California" the California Supreme Court held that because it knew such a system existed and knew it would benefit economically from Cheng Shin's sales of Chen Shins products, *Asahi* had sufficient contacts with California to permit California to exercise jurisdiction over *Asahi*. (Appendix C-11-12.) The ruling is directly contrary to this Court's rulings that "the unilateral activity of those who claim some relationship with a nonresident defendant cannot satisfy the requirement of contact with the forum State" (444 U. S. at 298, quoting *Hanson v. Denckla*, 357 U.S. 235, 253 (1958)), and the requirement that "it is essential in each case that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State." *Hanson v. Denckla*, 357 U.S. at 253. *Asahi*'s product is only located in California and sold there because Cheng Shin, through its unilateral activity, chooses to market it in California and purposefully avails itself of the privilege of conducting activities within California. Thus, the California Supreme Court unconstitutionally imputed Cheng Shin's contacts with California to *Asahi* in derogation of this Court's rulings in *Hanson*, *World-Wide Volkswagen* and *Rush v. Savchuk*, 444 U.S. 320, 331-32 (1980).

C. The Decision Improperly Applies the Stream of Commerce Theory of Jurisdiction Without Appropriate Constitutional Limitations

Fundamental to the California Supreme Court's decision in *Asahi* was this Court's dictum in *World-Wide Volkswagen* that:

The forum state does not exceed its powers under the Due Process Clause if it asserts personal jurisdiction over a corporation that delivers its products into the stream of

commerce with the expectation that they will be purchased by consumers in the forum State. [444 U.S. at 297-98.]

Relying on the stream of commerce dictum of *World-Wide Volkswagen* in isolation from the other affiliating circumstances that are a necessary predicate to the exercise of state jurisdiction, the California Supreme Court holds, essentially, that all manufacturers of products and component parts are subject to jurisdiction throughout the world if the manufacturer was aware that one way or another its product would be sold in any particular forum. (Appendix C-14-15.)

We submit that the California Supreme Court's application of this Court's dictum in *World-Wide Volkswagen* represents an additional conflict with a decision of this Court, at least to the extent it seeks to impose jurisdiction on product manufacturers who place their products in the stream of commerce, but who otherwise have no contacts, ties, or relations with the forum state. The stream of commerce theory of jurisdiction, as recognized by the Court of Appeal, is a

means of sustaining jurisdiction in products liability cases in which the product had traveled through an extensive chain of distribution before reaching the ultimate consumer. [Appendix B-4, citing *DeJames v. Magnificence Carriers, Inc.*, 654 F.2d 280, 285 (3d Cir. 1981).]

It is premised on the belief that manufacturers should not be able to insulate themselves from jurisdiction by acting through intermediaries instead of dealing directly with the forum state. It thus serves as a warning to defendants who employ an indirect marketing scheme to sell their products within the forum that the courts will not condone that fiction.

Thus the stream of commerce theory of jurisdiction has no application to component parts manufacturers, such as *Asahi*, who only supply material to others, who may or may not intend to deal with a particular forum. It has no application to those who do not have an indirect marketing scheme to serve the forum. It has no application to those who do not deliberately design their product with the anticipation that the product will be used in the United States and do not attempt to comply with United States

rules and regulations in so designing their product, but leave those considerations to the manufacturer of the product to be marketed here. The stream of commerce theory of jurisdiction *still* requires some actual, voluntary and deliberate conduct by the nonresident defendant with the forum State.⁸

Asahi has made no attempt to exploit the California marketplace. Asahi has made no attempt to insulate itself from direct dealings with the forum state by using intermediaries. Asahi has no marketing scheme to serve California. Asahi does not deliberately design its products so as to comply with local rules and regulations.

The California Supreme Court fails to recognize the constitutional limitations to the stream of commerce theory of jurisdiction which were implicit in this Court's ruling in *World-Wide Volkswagen*, and, thus, its decision in *Asahi* is in conflict with this Court's decision in *World-Wide Volkswagen*.

D. The Decision Applies California Law to the Case as the Basis for Finding the Interest of the State to Establish Jurisdiction

The California Supreme Court based its ruling on a constitutionally unsupportable premature conclusion that California law would govern the merits, contrary to rulings of this Court and federal courts of appeals under the Due Process Clause.

In *World-Wide Volkswagen* this Court pointed out that the forum state's interest in adjudicating the dispute was a relevant factor in meeting the requirement of reasonableness under *International Shoe* (at 292).

Therefore, after finding the contacts of Asahi with California sufficient, the California Supreme Court turned its attention to the question of California's interest and immediately discovered

⁸ Implicit in this Court's rulings is that there be actual and voluntary contacts by the nonresident defendant with the forum state before jurisdiction may be asserted over it. See Louis, *The Grasp of Long Arm Jurisdiction Finally Exceeds Its Reach: A Comment on World-Wide Volkswagen Corp. v. Woodson and Rush v. Savchuk*, 58 N.C.L. Rev. 407, 428 (1980).

"a strong interest in protecting its consumers by ensuring that foreign manufacturers comply with the state's safety standards." (Appendix C-16.) By this the Court meant nothing less than the application of California law to the claim of the Taiwanese manufacturer against the Japanese manufacturer, which necessarily depends upon their transactions with each other.⁹ Indeed, with marvelous facility and infallible circular reasoning, the Court anticipated this point by treating the assumed application of California law to Far Eastern transactions as the "protections of California's laws" of which Asahi "purposefully availed itself" for the purpose of meeting the contacts test of jurisdiction (Appendix C-11.) In doing so it regarded the possibility of being sued in California as one of the "privileges and benefits"¹⁰ of California law!

The Court found supplemental interests of California in "the orderly administration of its laws . . . where, as here, 'most of the evidence, testimonial and otherwise, is within its borders . . .'"¹¹ and in the fact that Cheng Shin had named "numerous defendants" and the "possibility of inconsistent verdicts if Asahi cannot be sued in California." (Appendix C-16.)

Here again California assumes the application of its law in undertaking a burden of orderly administration, while the concern with inconsistent verdicts begs the question by assuming a California interest in the verdict as to Asahi.

The application of forum state law to foreign defendants is limited by considerations of due process under the Constitution.

⁹ *Hedrick v. Daiko Shoji Co.*, 715 F.2d 1355 (9th Cir. 1983), *reh'g granted, op. withdrawn, in part*, 733 F.2d 1335 (9th Cir. 1984), which the court cited here was clearly distinguishable as a tort suit by an Oregon resident who had not yet been compensated, as has occurred in the case of the Californian here.

¹⁰ *World-Wide Volkswagen* at 295.

¹¹ The notion that most of the evidence about the Japanese and Taiwanese manufacturing processes and the transactions between the manufacturers would be within the borders of California is unsupported by the record and whimsical.

Home Insurance Co. v. Dick, 281 U.S. 397 (1930); *Allstate Insurance Co. v. Hague*, 449 U.S. 302 (1981). As the Court unanimously held in *Home Insurance*, an objection that the application of state law to contracts made and to be performed abroad violates the Constitution "raises federal questions of substance" (at 407). Again in the *Allstate* case, while there were divergent opinions, all the justices agreed that the application of forum state law was to be tested under the Due Process Clause.¹²

This Court has in recent years consistently resisted the argument that the involvement of forum state law could be reached preliminarily and made a basis for taking personal jurisdiction, even in a case where it could be recognized that the forum state law was almost certainly involved.

In *Hanson v. Denckla*, 357 U.S. 235, 253 (1958), it had been argued in favor of Florida jurisdiction that Florida law was applicable. The court rejected consideration of factors which might be justifiable in ruling on choice of law and concluded:

[The Florida court] does not acquire that jurisdiction by being the "center of gravity" of the controversy, or the most convenient location for litigation. The issue is personal jurisdiction, not choice of law.

In *Shaffer v. Heitner*, 433 U.S. 186, 216 (1977), Delaware jurisdiction was rejected despite an argument made from the rather obvious applicability of Delaware law and this Court said:

But like *Heitner's* first argument, this line of reasoning establishes only that it is appropriate for Delaware law to govern the obligations of appellants to Greyhound and its stockholders. It does not demonstrate that appellants have "purposefully avail[ed themselves] of the privilege of conducting activities within the forum state," *Hanson v.*

¹² The *Allstate* case concerned choice between laws of neighboring states but the *Home* case involved a conflict between Texas and Mexico. While the resolution of such questions will differ when the Full Faith and Credit Clause is involved, there is no indication that the test under the Due Process Clause is different in the one case than the other.

Denckla, supra, at 253, in a way that would justify bringing them before a Delaware tribunal."

That the issue of taking choice of law into account was actively considered in that case is indicated by Mr. Justice Brennan's dissent, 433 U.S. at 219, 224-25, where he recognized that "jurisdictional and choice-of-law inquiries are not identical", but observed that they were closely related and depended upon similar considerations and stated:

Furthermore, I believe that practical considerations argue in favor of seeking to bridge the distance between the choice of law and jurisdictional inquiries.¹³

Again, in *Kulko v. California Superior Court*, 436 U.S. 84, 98 (1978), this Court rejected the argument that even the ultimate application of California law and California's interest in applying it weighed in favor of personal jurisdiction in California:

But while the presence of the children and one parent in California arguably might favor application of California law in a lawsuit in New York, the fact that California may be the "center of gravity" for choice of law purposes does not mean that California has personal jurisdiction over the defendant. *Hanson v. Denckla*, at 254.¹⁴

Thus has this Court indicated that a state court seeking to establish personal jurisdiction cannot proceed by first assuming jurisdiction to determine what law would apply, and then using the application of its own law as a footing for the jurisdiction.

It may be argued that it is too early to determine on the record in this case what law should apply to the transactions between the Japanese and Taiwanese manufacturers. If so, it is surely improper to assume the determination for the purpose of taking

¹³ See Martin, *Personal Jurisdiction and Choice of Law*, 78 Mich. L. Rev. 872 (1980), urging this Court to apply the same test of minimum contacts to choice of law as to jurisdiction.

¹⁴ But cf. *McGee v. International Life Insurance Co.*, 355 U.S. 220, 223 (1957), apparently giving weight to California's interest in applying her laws regarding insurance.

jurisdiction and applying the assumed law. On the record available the assumption of the Court below has not even an apparent claim to correctness because it is contrary to the standards constitutionally applied by this Court over a long period to foreign contracts.

This Court has continually held it to be a general rule that, in the absence of evidence that the parties to a contract had any other intention at the time of making it, the nature, obligation and interpretation of the contract are governed by the law of the place where it was made and that such is the presumed intention of the parties.¹⁵ In applying the rule in *Mutual Life Insurance Co. of New York v. Liebing*, 259 U.S. 209, 214 (1922), Justice Holmes said that:

although the circumstances may present some temptation to seek a different one by ingenuity, the Constitution and the first principles of legal thinking allow the law of the place where a contract is made to determine the validity and the consequences of the act.

In other contexts this Court has rejected the enticements of legal jingoism in international commerce.¹⁶

If the California Court had based its claim of interest on a flatly stated policy to avoid the presence of all unsafe objects in

¹⁵ Extensive past evidence for this rule was collected in *Liverpool and Great Western Steam Co. v. The Phenix Ins. Co.*, 129 U.S. 397 (1889). It has continued to be applied, e.g., in *Hall v. Cordell*, 142 U.S. 115 (1891); *Gaston, Williams, & Wigmore of Canada, Ltd. v. Warner*, 260 U.S. 201 (1922); *Mutual Life Ins. Co. of New York v. Liebing*, 259 U.S. 209 (1922).

¹⁶ This Court cautioned in *M/S BREMEN, et al. v. Zapata Off-Shore Co.*, 407 U.S. 1, 9 (1972) that "we cannot have trade and commerce in world markets and international waters exclusively on our terms, governed by our laws, and resolved in our courts." And in *Scherk v. Alberto-Culver Co.*, 417 U.S. 506, 517 n.11 (1974), the Court observed that the notion that American standards must govern "demeans the standards of justice elsewhere in the world, and unnecessarily exalts the primacy of the United States law over the laws of other countries".

California, it would clearly have posed the question whether the state could blanket with its laws and judicial reach the whole world from which products pass in and through California. It would have been reminiscent of Lord Ellenborough's famous question, "Can the Isle of Tobago pass a law to bind the rights of the whole world?"¹⁷ The California court has invoked the same power in only slightly softer words.

The unexamined premise by which California assumes the application of her laws as a basis for her taking jurisdiction to apply them will not pass examination unless this Court desires to modify the standards it has previously applied.¹⁸

III. The Decision of the California Supreme Court Is in Conflict with Decisions of Federal Courts of Appeal

A. Conflicts on the Application of the Stream of Commerce Theory of Jurisdiction

Asahi and other decisions of state courts of last resort¹⁹ irreconcilably conflict with several federal court of appeals decisions

¹⁷ *Buchanan v. Rucker*, 9 East 192, 194 (1808).

¹⁸ See Mr. Justice Brennan's dissent in *Shaffer v. Heitner* at 224-25, urging such modification.

¹⁹ See, e.g., *Ford Motor Co. v. Atwood Vacuum Machine Co.*, 392 So. 2d 1305 (Fla.), cert. denied and appeal dismissed, 452 U.S. 901 (1981), a case in which an Illinois door hinge manufacturer who sold its products to Ford in Michigan was held subject to jurisdiction in Florida for the product liability indemnity claims of Ford. See also *Volkswagenwerk A.G. v. Klippan GmbH*, 611 P.2d 498 (Alaska), cert. denied, 449 U.S. 974 (1980), a case in which a German seatbelt manufacturer was held subject to Alaska jurisdiction for alleged defects in a seatbelt installed on a German Volkswagen. *Klippan* arguably is consistent with the rationale articulated in cases limiting the stream of commerce theory of jurisdiction insofar as jurisdiction was not premised solely on the fact that the seatbelt manufacturer placed its product into the stream of commerce since there existed purposeful activity in the form of deliberately designing its product to comply with United States laws and regulations in anticipation of its being widely used and marketed in America. See discussion section II.C, *supra*.

which refuse to extend the stream of commerce theory of jurisdiction to situations where the product manufacturer has not engaged in any voluntary conduct with respect to the forum.

Directly in conflict with *Asahi* is the decision in *Humble v. Toyota Motor Co.*, 578 F. Supp. 530 (N.D. Iowa 1982), *aff'd*, 727 F.2d 709 (8th Cir. 1984). In *Humble*, plaintiff sought recovery for personal injuries sustained in an automobile accident which occurred in Iowa and claimed that the seats of the automobile were somehow defective. Plaintiff sued the manufacturer of the automobile (Toyota Motor Co., Ltd.) and the manufacturer of the seats, Arakawa Auto Body Co., Ltd. ("Arakawa"). Arakawa was a Japanese corporation which sold its seats in Japan to Toyota. Arakawa had no contacts with Iowa or the United States. The court concluded that Arakawa did not have sufficient minimum contacts with Iowa. The court noted that the only possible contacts Arakawa could be said to have with the United States or Iowa were by way of the fact that Toyota sells automobiles containing parts manufactured in Japan by Arakawa and concluded that the contacts between Iowa and Arakawa were "simply too fortuitous and tenuous to warrant the exercise of personal jurisdiction over Arakawa." 758 F. Supp. at 532. While it was foreseeable that Arakawa's product would find its way into the United States and Iowa, Arakawa had not purposely availed itself of the privilege of conducting business in Iowa. Cases relying upon the stream of commerce theory of jurisdiction were distinguished as involving direct efforts to serve the American market. (See *Oswalt v. Scripto, Inc.*, 616 F.2d 191 (5th Cir. 1980).) The *Humble* court contrasted cases such as *Oswalt* with cases such as *Hutson v. Fehr Brothers*, 584 F.2d 833 (8th Cir.), *cert. denied*, 439 U.S. 983 (1978), a case also in conflict with this case, concluding that no jurisdiction could be obtained over a foreign defendant who placed a product in the stream of commerce where the foreign defendant did not consciously solicit or market the product in the United States and thus had not purposely availed itself of the privilege of conducting business within the forum state.

Similarly in conflict with *Asahi* is the decision in *DeJames v. Magnificence Carriers, Inc.*, 654 F.2d 280 (3d Cir.), *cert. denied*,

454 U.S. 1085 (1981), which in turn conflicts with *Hedrick v. Daiko Shoji Co.*, 715 F.2d 1355 (9th Cir. 1983), *reh'g granted, op. withdrawn, in part*, 733 F.2d 1335 (9th Cir. 1984).²⁰ In these cases, alien manufacturers of vessels or their component parts were resisting the exercise of jurisdiction over them for personal injury claims of local plaintiffs.²¹ Neither of the alien defendants had sought to market its product in the forum state directly or indirectly, and no contacts, ties or relations with the forum state were attributed to them. The court in *DeJames* rejected the concept that the stream of commerce theory of jurisdiction could provide a constitutional basis for imposing jurisdiction over the alien manufacturer where it did not voluntarily act with respect to the forum and did not seek to insulate itself from jurisdiction by acting through intermediaries instead of dealing directly with the forum state.²² The court in *Hedrick* found no such constraints on the stream of commerce theory of jurisdiction. Merely producing a wire rope splice in Japan for a Japanese vessel that undoubtedly would visit United States ports was a sufficient basis for asserting jurisdiction over the wire rope manufacturer in whatever forums the owner of the vessel chose to visit. (715 F.2d at 1358.)

Asahi and the cases cited above clearly indicate that more than one constitutional analysis is being employed to determine whether nonresident product manufacturers (particularly component parts manufacturers) whose products find their way to a particular state exclusively through the unilateral activity of

²⁰ See also *Sousa v. Ocean Sunflower Shipping Co.*, 608 F. Supp. 1309 (N.D. Cal. 1984), where the district court in a similar case declines to follow its own court of appeals in *Hedrick* on the basis that the court of appeals has misread *World-Wide Volkswagen*.

²¹ In *DeJames* the nonresident defendant was a Japanese company which converted a bulk carrier to an automobile carrier in Japan. In *Sousa* the defendant was a Japanese shipbuilder which designed and constructed a ship to be used by another Japanese company in trade between Japan and the United States. In *Hedrick* the defendant was a Japanese company which manufactured a wire rope splice that it sold to a Japanese vessel.

²² See discussion, section II.C, *supra*.

others, are subject to a particular forum's jurisdiction. The Due Process Clause, however, will not permit defendants identically situated to be treated completely differently based solely upon the particular state which is seeking to exercise jurisdiction. Constitutionally, states which authorize the exercise of jurisdiction on any basis not inconsistent with the Constitution of the United States must uniformly exercise jurisdiction against nonresidents.

Asahi thus presents this Court with the opportunity to resolve the conflicts which exist between the states and circuits and to establish a uniform basis upon which state courts will determine whether or not to exercise jurisdiction in future product liability cases.

B. Conflicts on the Application of State Law to Establish a State Interest in Exercising Jurisdiction

In none of the federal cases cited above have the courts regarded the desire, nor even the actual right, of the forum state to apply its own law as an interest of the state for the purpose of establishing the fairness and reasonableness of exercising jurisdiction. In this respect, too, the Supreme Court of California is in direct conflict with federal courts of appeals, notably in *Iowa Electric Light & Power Co v. Atlas Corp.*, 603 F.2d 1301, 1304 (8th Cir. 1979), *cert. denied*, 445 U.S. 911 (1980); *Galgay v. Bulletin Co.*, 504 F.2d 1062, 1066 (2d Cir. 1974); and *Southern Machine Co. v. Mohasco Industries, Inc.*, 401 F.2d 374, 382 (6th Cir. 1968). *But contra Product Promotions, Inc. v. Cousteau*, 495 F.2d 483, 498 (5th Cir. 1974); and see *Blount v. Peerless Chemicals (P.R.) Inc.*, 316 F.2d 695 (2d Cir.), *cert. denied*, 375 U.S. 831 (1963). In rejecting or not adopting the application of forum state law as showing the interest of the state, other courts of appeals have usually not discussed the matter, perhaps because it was not raised or thought worthy of discussion. As the matter ought to be clear in light of past decisions of this Court, we have discussed this point in detail under the heading of "Conflict with Decisions of This Court" above.

IV. The Question Is Important and Should Be Settled

It is unnecessary to elaborate the seriousness with which this Court has always regarded the exercise of jurisdiction by a state over those who are neither citizens nor residents of it. The importance in principle of the questions raised is manifest throughout the opinions, majority, concurring and dissenting, in the Court's cases already cited by us and all others in descent from *International Shoe*.

The questions raised here are important also in their incidence. This case and others cited involving the same or closely analagous applications of principles laid down by this Court are but indications of many more instances of confusion, doubt and difference to be found in courts of first instance. The Justices need only consult their own perceptions of the complexity of international commerce, stimulated by technology and increased commercial ingenuity, to recognize that there are countless and growing numbers of products owing their provenance to several manufacturers and nations. It requires little argument, we submit, to support the view that it is highly important for the manufacturers of components to know whether and when they are subject to jurisdiction here and who, as between themselves and the ultimate manufacturers and distributors, has the responsibility for complying with state laws and standards.

CONCLUSION

For the foregoing reasons we respectfully submit that the Court should grant a writ of certiorari to review the decision of the Supreme Court of California.

Respectfully submitted,

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Of Counsel

(Appendices follow)

Appendix A

**In the Superior Court of the State of California
In and for the County of Solano
Department No. V**

No. 76180

**Michael Zurcher, et al.,
Plaintiffs,**

vs.

**Dunlop Tire & Rubber Co., et al.,
Defendants.**

ORDER DENYING MOTION TO QUASH SUMMONS

[Filed April 22, 1983]

Hearing on cross-defendant Asahi Metal Industry Co., Inc., Motion to Quash came regularly before the Court on April 12, 1983, attorney Michael Dobrin appearing on behalf of defendant, attorney Richard D. Hoffman appearing on behalf of cross-defendant Asahi Metal Industry Co., Inc., and attorney Ronald R. Haven appearing on behalf of cross-complainant Chen Shin Rubber Industrial Co., Ltd oral arguments having been presented and the matter submitted to the Court.

The defendant Asahi is alleged to have manufactured a tire valve which was defective and caused the injuries complained of herein. Plaintiff did not sue Asahi but the defendants have attempted to bring Asahi before the Court on cross-complaints. Asahi has no office, agents, or employees in California. It does not do business directly in California. Asahi did sell tire valves to Cheng Shin of Taiwan, who installed them in innertubes and sold many in the United States and specifically in California. From 1978 to 1982 Cheng Shin purchased 1,250,000 tire tube valve assemblies from Asahi. Asahi was advised by Cheng Shin that its tubes with Asahi valves would be sold in the United States.

The Court must view the commercial actuality of the situation. Asahi availed itself of the California market and benefitted therefrom and it was foreseeable that it would do so. The

declarations indicate a volume of Asahi tire valves in this jurisdiction sufficient to indicate that Asahi's availing itself of this market was not an isolated occurrence. Asahi has the requisite minimum contacts with this jurisdiction.

It is fair and reasonable that the case be tried here. Plaintiffs are California residents. One or more of the defendants or cross-defendants are California residents. The accident and injuries occurred here. Asahi asserts inconvenience without supporting facts on the other hand, Asahi obviously does business on an international scale. It is not unreasonable that they defend claims of defect in their product on an international scale.

THEREFORE, IT IS ORDERED, that the Motion to Quash Summons be and the same is hereby denied.

Dated: April 20, 1983.

s/ DWIGHT ELY
Judge of the Superior Court

Appendix B

In the Court of Appeal of the State of California

First Appellate District

Division Five

Certified For Publication

A022366

Sup.Ct.No. 76180

ASAHI METAL INDUSTRY CO., LTD.,

Petitioner,

v.

THE SUPERIOR COURT OF SOLANO COUNTY,

Respondent,

CHENG SHIN RUBBER INDUSTRIAL CO., LTD.,

Real Party in Interest.

[Filed Sept. 15, 1983]

Asahi Metal Industry Co., Ltd., a Japanese corporation, seeks by petition for writ of mandate to compel respondent superior court to quash service upon it of summons on a cross-complaint in a California product liability action. We grant the writ because, on the record before us, Asahi has insufficient contacts with California to subject it to respondent court's jurisdiction.

Asahi manufactures tire valve assemblies in Japan and sells the assemblies to several different tire manufacturers for use as components in finished tires. One such manufacturer is Cheng Shin Rubber Industrial Co., Ltd., in Taiwan. In September 1978, Gary Zurcher was injured and his wife was killed when a tire on their motorcycle blew out as they were driving on a freeway in Solano County. The tire's tube had been manufactured by Cheng Shin and incorporated an Asahi valve assembly. Zurcher and his children brought this action, attributing the accident to Cheng Shin among others. Asahi is not named as a defendant. More than two years after the action was commenced, Cheng Shin filed a

cross-complaint for indemnity (cf. *American Motorcycle Assn. v. Superior Court* (1978) 20 Cal.3d 578) against the other defendants and several new cross-defendants including Asahi. Summons on the cross-complaint was served on Asahi, which moved to quash the service. Asahi's motion was denied and this writ petition followed.

Service on Asahi was effected in Japan under applicable treaty and is not challenged. Asahi contends that it is not subject to the jurisdiction of the California court and that "[i]t would be extremely inconvenient and burdensome for ASAHI to enter into this litigation in California for a claim unrelated to any conduct of ASAHI outside of JAPAN."

The relevant rules were recently summarized by the Supreme Court in *Secrest Machine Corp. v. Superior Court* (1983) 33 Cal.3d 664, 668-670. There is no need either to reprint or to paraphrase that summary. In this rapidly shrinking commercial world with business activities becoming increasingly integrated and interdependent, it is possible for a foreign manufacturer of a component embodied elsewhere into another foreign manufacturer's finished product, by reason of deliberate or foreseeable indirect activity to be found subject to California jurisdiction for claims based on asserted defects in the component. (Cf. *Buckeye Boiler Co. v. Superior Court* (1969) 71 Cal.2d 893, 903; *St. Joe Paper Co. v. Superior Court* (1981) 120 Cal.App.3d 991.) But under the case law as synthesized in *Secrest*, the dispositive question here is whether the quality and nature of Asahi's contacts with California are such that it would be reasonable in all the circumstances to require Asahi to come to California to respond to Cheng Shin's cross-complaint.

According to Asahi's president "Asahi has from time to time in the last ten years sold tire valves for use on motorcycle tire tubes to Cheng Shin . . . in Taiwan. All of the sales occurred in Taiwan. All of the shipments were sent from JAPAN to TAIWAN. None of the shipments were made to California." Cheng Shin bought and incorporated 150,000 Asahi valve assemblies in 1978; 500,000 in 1979; 500,000 in 1980; 100,000 in 1981; and 100,000 in 1982. Sales to Cheng Shin accounted for 1.24 percent of Asahi's gross in 1981 and 0.44 percent in 1982. Cheng Shin purchases valve

assemblies from suppliers other than Asahi as well, and sells finished tubes throughout the world; it alleges that approximately 20 percent of its sales in the United States are in California. It markets its tubes in California through Chen Shin Tire USA, Inc., a California corporation, which apparently is not involved in this lawsuit.

The record contains an unscientific sampling of the inventory of a cyclery in Solano County, conducted earlier this year, which indicates that of approximately 117 tubes on hand, 97 had been manufactured in Japan or Taiwan, that of the 97, Cheng Shin had manufactured 53 (somewhat more than half), and that Asahi had provided the valve stem assemblies for slightly less than one-fourth of the Cheng Shin tubes (and for approximately the same percentage of the other Japanese and Taiwanese tubes).

According to Asahi's president "ASAHI does not do business in California. It has no office in California. It has no agents in California. It has no employees in California." It maintains no spare parts and gives no advice on maintenance, sales, or use in California. It does not advertise in California. It does not solicit business in California. It has conducted no deliberate economic acts to serve the tire market in California. It owns no property in California. Further, the president declares that "ASAHI has never contemplated that its limited sales of tire valves to Cheng Shin in Taiwan would subject it to lawsuits in California."

A Cheng Shin manager, on the other hand, declares that "[i]n discussions with ASAHI regarding the purchase of valve stem assemblies the fact that my Company sells tubes throughout the world and specifically the United States has been discussed. I am informed and believe that ASAHI was fully aware that valve stem assemblies sold to my Company and to others would end up throughout the United States and in California."

Asahi had only such contact with California as is implicit in the fact that it sold components to another nonresident manufacturer which foreseeably would sell the finished product in California. By selling valve stem assemblies to Cheng Shin in these circumstances, was Asahi "engaging in economic activity within this state 'as a matter of commercial actuality'" within the meaning

of *Secrest Machine Corp. v. Superior Court*, *supra*, 33 Cal.3d at p. 669 and *Buckeye Boiler Co. v. Superior Court*, *supra*, 71 Cal.2d 893, 902-903? Could Asahi thus be said purposefully to have availed itself "of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws" within the meaning of *Hanson v. Denckla* (1958) 357 U.S. 235, 253, and cognate cases?

Strongest support for affirmative answers, in these circumstances, would come from what has been called the "stream-of-commerce" theory of jurisdiction over nonresident manufacturers. This theory, usually attributed to *Gray v. American Radiator & Standard Sanitary Corp.* (1961) 22 Ill.2d 432 [176 N.E.2d 761], was authoritatively validated in *World-Wide Volkswagen Corp. v. Woodson* (1980) 444 U.S. 286: "The forum State does not exceed its powers under the Due Process Clause if it asserts personal jurisdiction over a corporation that delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum State." (444 U.S. at pp. 297-298.) One federal court has explained the theory as follows: "The stream-of-commerce theory developed as a means of sustaining jurisdiction in products liability cases in which the product had traveled through an extensive chain of distribution before reaching the ultimate consumer. Under this theory, a manufacturer may be held amenable to process in a forum in which its products are sold, even if the products were sold indirectly through importers or distributors with independent sales and marketing schemes. Courts have found the assumption of jurisdiction in these cases to be consistent with the due process requirements identified above: by increasing the distribution of its products through indirect sales within the forum, a manufacturer benefits legally from the protection provided by the laws of the forum state for its products, as well as economically from indirect sales to forum residents. Underlying the assumption of jurisdiction in these cases is the belief that the fairness requirements of due process do not extend so far as to permit a manufacturer to insulate itself from the reach of the forum state's long-arm rule by using an intermediary or by professing ignorance of the ultimate destination of its products." (*DeJames v. Magnificence Carriers, Inc.* (3d Cir. 1981) 654 F.2d 280, 285.)

But *World-Wide Volkswagen* also points out that mere foreseeability that the product will enter the forum state will not be enough by itself to establish jurisdiction over the distributor and retailer: "'[F]oreseeability' alone has never been a sufficient benchmark for personal jurisdiction under the Due Process Clause. . . . [¶] If foreseeability were the criterion . . . [e]very seller of chattels would in effect appoint the chattel his agent for service of process. His amenability to suit would travel with the chattel." (444 U.S. at pp. 295-296.) To reconcile *World-Wide Volkswagen's* endorsement of the stream-of-commerce theory with its views on foreseeability, we conclude that "expectation" that the product will be purchased in the forum state means something more than mere foreseeability that the product will be so purchased. *World-Wide Volkswagen* acknowledges that foreseeability is not " . . . wholly irrelevant. But the foreseeability that is critical to due process analysis is not the mere likelihood that a product will find its way into the forum State. Rather, it is that the defendant's conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there." (444 U.S. at p. 297.)

These are elastic terms consistent with the California Supreme Court's caution in *Secrest* that there is no bright line to be drawn between cases in which there are sufficient contacts between the forum and the foreign defendant and those in which there are not. *World-Wide Volkswagen* points out that "[t]he concept of minimum contacts . . . can be seen to perform two related, but distinguishable, functions. It protects the defendant against the burdens of litigating in a distant or inconvenient forum. And it acts to ensure that the States, through their courts, do not reach out beyond the limits imposed on them by their status as coequal sovereigns in a federal system." (444 U.S. at pp. 291-292.) *World-Wide Volkswagen's* second point is applicable a fortiori where it is proposed that a state's sovereignty be extended beyond the federal system. Implicit in each of the two functions *World-Wide Volkswagen* identifies is a balancing of interests among the litigants and the forum.

In the circumstances here, we conclude that it would not be reasonable to require Asahi to respond in California solely on the

basis of ultimately realized foreseeability that the product into which its component was embodied would be sold all over the world including California.

Furthermore, we conclude that it would not be fair and reasonable for a California court to exercise jurisdiction. It is not reasonable to require a component manufacturer, a small part of whose trade is with a Taiwanese fabricator, to come to California to respond to this cross-complaint.

Let a peremptory writ of mandate issue commanding respondent superior court to vacate its order denying the motion of Asahi Metal Industry Co., Ltd., to quash service of summons, and to enter an order granting the motion.

LOW, P.J.

We concur:

KING, J.

HANING, J.

Appendix C

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

S.F. 24657

ASAHI METAL INDUSTRY CO., LTD.,
Petitioner,

v.

THE SUPERIOR COURT OF SOLANO COUNTY,
Respondent;

CHENG SHIN RUBBER INDUSTRIAL CO., LTD.,
Real Party in Interest.

[Filed July 25, 1985]

SEE DISSENTING OPINION

Can California constitutionally exercise personal jurisdiction over a manufacturer of component parts who made no direct sales in California but had knowledge that a substantial number of its parts would be incorporated into finished products sold in the state?

I.

In 1978, Gary Zurcher was severely injured when he lost control of his Honda motorcycle and collided with a tractor rig. His passenger and wife, Ruth Ann Moreno, was killed. The accident was allegedly caused by a sudden loss of air and an explosion in the rear tire of the motorcycle. Both Zurcher and Moreno were California residents. The collision occurred on a California highway.

Zurcher filed a products liability action alleging that the motorcycle tire, tube, and sealant were defective. Zurcher's complaint named, inter alia, Cheng Shin Rubber Industrial Co., Ltd. (Cheng Shin), the Taiwanese manufacturer of the tube, and Sterling May Company, Inc., the California retailer. Cheng Shin, in turn, filed a cross-complaint seeking indemnity from its co-

defendants and from Asahi Metal Industry Co., Ltd. (Asahi), the manufacturer of the tube's valve assembly.

Asahi is a major Japanese producer of valve assemblies. Its product is incorporated into tubes sold throughout the world, including tubes sold to the large motorcycle manufacturers. The declarations presented to the trial court established that Asahi has the following contacts in California.

For 10 years, Asahi has done business with Cheng Shin, a tube manufacturer that makes 20 percent of its United States sales in California. Between 1978 and 1982, Asahi sold 1,350,000 valve assemblies to Cheng Shin. Such sales represented 1.24 percent of Asahi's gross income in 1981 and .44 percent of its gross income in 1982. In addition, Asahi valve assemblies are incorporated into the tubes of numerous other manufacturers selling tubes in California.¹

Asahi moved to quash service of summons. The trial court denied the motion, finding that Asahi had the requisite minimum contacts with California and that jurisdiction was fair and reasonable. The trial court relied on (1) the significant number of tubes with Asahi valve assemblies sold in California, (2) the number of valve assemblies Asahi sold to Cheng Shin, (3) Cheng Shin's substantial business with California, and (4) Asahi's knowledge that its valve assemblies would be incorporated into tubes sold in California.

Asahi now seeks a writ of mandate compelling the trial court to grant its motion to quash service of summons.

II.

California's long-arm statute provides that it can exercise jurisdiction "on any basis not inconsistent with the Constitution of

¹ At the hearing on the motion to quash service of summons, Cheng Shin presented the declaration of one of its lawyers, who described his survey of the store operated by defendant Sterling May Company, Inc. Of the 97 Japanese or Taiwanese tubes offered for sale, 21 of the tubes or 22 percent contained Asahi valve assemblies. (The store offered fewer than 20 tubes that were not manufactured in Taiwan or Japan.)

this state or of the United States." (Code Civ. Proc., § 410.10.) Asahi contends that its connection with California does not warrant jurisdiction. It cites the due process clause of the Fourteenth Amendment of the United States Constitution, which bars the states from entering judgments affecting the rights or interests of a nonresident defendant absent such "minimum contacts" with the state that "the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" (Internat. Shoe Co. v. Washington (1945) 326 U.S. 310, 316 [hereafter *International Shoe*], quoting *Milliken v. Meyer* (1940) 311 U.S. 457, 463.)

As the United States Supreme Court noted in *International Shoe*, the minimum contacts test is not "mechanical or quantitative," but depends upon the "quality and nature" of the defendant's activities within the state. (*International Shoe, supra*, 326 U.S. at p. 319.) If a nonresident corporation's activities are sufficiently wide-ranging, systematic, and continuous, it may be subject to jurisdiction within the state on a cause of action unrelated to those activities. (*Id.*, at p. 318; *Secrest Machine Corp. v. Superior Court* (1983) 33 Cal.3d 664, 669; *Buckeye Boiler Co. v. Superior Court* (1969) 71 Cal.2d 893, 898-899.) Where the activity is less extensive, the cause of action "must arise out of or be connected with the defendant's forum-related activity." (*Buckeye Boiler, supra*, 71 Cal.2d at p. 899; see also *Secrest, supra*, 33 Cal.3d at p. 669.)

Thus, in determining whether the defendant's contacts with the forum are sufficient to warrant jurisdiction, the courts must focus on "the relationship among the defendant, the forum, and the litigation." (*Shaffer v. Heitner* (1977) 433 U.S. 186, 204; accord *Secrest, supra*, 33 Cal.3d at p. 668.) "The relationship between the defendant and the forum must be such that it is 'reasonable . . . to require the corporation to defend the particular suit which is brought there.'" (*World-Wide Volkswagen Corp. v. Woodson* (1980) 444 U.S. 286, 292, quoting *International Shoe, supra*, 326 U.S. at p. 317, emphasis added.)

In the 40 years since *International Shoe* was decided, the minimum contacts standard has been "substantially relaxed." (*World-Wide Volkswagen, supra*, 444 U.S. at p. 292.) In *McGee*

v. International Life Ins. Co. (1957) 355 U.S. 220, the Supreme Court described the reason for liberalizing the rule. "In part this is attributable to the fundamental transformation of our national economy over the years. Today many commercial transactions touch two or more States and may involve parties separated by the full continent. With this increasing nationalization of commerce has come a great increase in the amount of business conducted by mail across state lines. At the same time modern transportation and communication have made it much less burdensome for a party sued to defend himself in a State where he engages in economic activity." (*Id.*, at pp. 222-223.) Moreover, as the Supreme Court observed in *Worldwide Volkswagen*, "[t]he historical developments noted in *McGee* . . . have only accelerated in the generation since that case was decided." (444 U.S. at p. 293.)

However, liberalization of the minimum contacts rule has not proceeded unabated. Shortly after *McGee* was decided, the Supreme Court warned that the state courts' jurisdiction over nonresidents is not limited solely by the inconvenience of litigating in a foreign tribunal. In addition to protecting defendants from the burdens of "distant litigation," the jurisdictional limits imposed by the due process clause "are a consequence of the territorial limitations on the power of the respective States." (*Hanson v. Denckla* (1958) 357 U.S. 235, 251.)

Therefore, even when a nonresident defendant would suffer only minor inconvenience as a result of the exercise of jurisdiction, "minimal contacts" with the forum are constitutionally required. (*Ibid.*) The *Hanson* court did not define the "minimal contacts" requirement except to hold that "it is essential in each case that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws." (*Id.*, at p. 253.)

More than 20 years after the *Hanson* decision, the Supreme Court applied the "purposefully avails" standard to an action for products liability. (See *World-Wide Volkswagen*, *supra*, 444 U.S. 286, 297-298.) As in *Hanson*, the court in *World-Wide Volkswagen* stressed the limitations of the states' jurisdiction over

nonresidents, citing principles of "interstate federalism." (*Id.*, at pp. 293-294.) Applying these principles, the court held the defendants' contacts with the forum insufficient to warrant jurisdiction. (*Id.*, at p. 299.)

Plaintiffs in *World-Wide Volkswagen* sued the manufacturer, importer, regional distributor, and retailer of their car for damages arising out of an automobile accident. The regional distributor (World-Wide) sold vehicles, parts, and accessories to dealers in New York, New Jersey, and Connecticut. The retailer (Seaway) sold cars only in New York, where plaintiffs purchased their car. Neither the distributor nor the retailer did any business in Oklahoma or shipped products to Oklahoma. (*Id.*, at pp. 288-289.)

The accident occurred in Oklahoma as plaintiffs were driving across the country. There was no evidence that any cars sold by World-Wide or Seaway had entered the state in the past. The Supreme Court found that Oklahoma lacked jurisdiction over World-Wide and Seaway because neither corporation sold cars to Oklahoma customers nor "indirectly, through others, serve[d] or [sought] to serve the Oklahoma market." (*Id.*, at p. 295.)

Plaintiffs in *World-Wide Volkswagen* argued that jurisdiction was proper because their automobile's inherent mobility made it foreseeable that the car would cause injury in Oklahoma. The court rejected this contention on the ground that under such reasoning "[e]very seller of chattels would in effect appoint the chattel his agent for service of process." (*Id.*, at p. 296.) However, the court held that foreseeability was relevant to the determination of minimum contacts. "[T]he foreseeability that is critical to due process analysis is not the mere likelihood that a product will find its way into the forum State. Rather, it is that the defendant's conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there." (*Id.*, at p. 297; accord *Kulko v. California Superior Court* (1978) 436 U.S. 84, 97-98; *Shaffer v. Heitner*, *supra*, 433 U.S. at p. 216.)

The court in *World-Wide Volkswagen* reasoned that when a defendant's conduct is such that he "purposefully avails [him-

self] of the privilege of conducting activities within the forum State," he is put on notice that he can be sued in the state. (*World-Wide Volkswagen, supra*, 444 U.S. at p. 297.) He can "alleviate the risk" by buying insurance, passing the potential litigation costs on to his customers, or curtailing his activities in the forum state. (*Ibid.*)

Thus, "if the sale of a product of a manufacturer or distributor . . . is not simply an isolated occurrence, but arises from the efforts of the manufacturer or distributor to serve, directly or indirectly, the market for its product in other States, it is not unreasonable to subject it to suit in one of those States if its allegedly defective merchandise has there been the source of injury to its owner or to others. The forum State does not exceed its powers under the Due Process Clause if it asserts personal jurisdiction over a corporation that delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum State." (*Id.*, at pp. 297-298.)

The opinion in *World-Wide Volkswagen* distinguishes a local retailer or distributor, such as Seaway or World-Wide, from a major "manufacturer or distributor such as Audi or Volkswagen." (*World-Wide Volkswagen, supra*, 444 U.S. at pp. 297-298.) Although it was foreseeable that cars distributed by World-Wide and sold by Seaway would be driven to Oklahoma, neither Seaway nor World-Wide received a substantial financial benefit "by virtue of the fact that their products [were] capable of use in Oklahoma." (*Id.*, at p. 299.)

However, when a manufacturer "delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum State" (*id.*, at p. 298), the manufacturer "benefits legally from the protection provided by the laws of the forum state for its products, as well as economically from indirect sales to forum residents." (*DeJames v. Magnificence Carriers, Inc.* (3d Cir. 1981) 654 F.2d 280, 285.) In such a situation, jurisdiction is reasonable because the manufacturer or distributor has invoked the benefits and protections of the forum's laws. (*Nelson by Carson v. Park Industries, Inc.* (7th Cir. 1983) 717 F.2d 1120, 1125-1126; *DeJames, supra*, 654 F.2d at p. 285; see also *International Shoe, supra*, 326 U.S. at p. 319.)

World-Wide Volkswagen's distinction between businesses that serve a local market and those that directly or "indirectly, through others," serve a broader market, has been explained as follows: "The two defendants in *World-Wide Volkswagen* who were not amenable to Oklahoma jurisdiction were at the end of the automobile's distribution system. The scope of the foreseeable market served by those defendants and of the benefits those defendants derived from the sale of the product was narrow. In contrast, the relevant scope is generally broader with respect to manufacturers and primary distributors of products who are at the start of a distribution system and who thereby serve, directly or indirectly, and derive economic benefit from a wider market. Such manufacturers and distributors purposely conduct their activities to make their products available for purchase in as many forums as possible. For this reason, a manufacturer or primary distributor may be subject to a particular forum's jurisdiction when a secondary distributor and retailer are not, because the manufacturer and primary distributor have intended to serve a broader market and they derive direct benefits from serving that market." (*Nelson, supra*, 717 F.2d at pp. 1125-1126; see also *DeJames, supra*, 654 F.2d at p. 286; *Rockwell Intern. Corp. v. Costruzioni Aeronautiche* (E.D.Pa. 1982) 553 F.Supp. 328, 332.)

In *Nelson*, the Seventh Circuit held that a Hong Kong manufacturer and a Hong Kong exporter of flannel shirts should reasonably have anticipated being haled into court in Wisconsin because their product was sold in the state and caused injury there. (*Nelson, supra*, 717 F.2d at pp. 1125-1127.) The manufacturer and the exporter argued that they were not subject to jurisdiction because they did not control the distribution of the product and were not responsible for the shirt's presence in Wisconsin. However, the court found that both defendants knew that they were introducing the product into the retailer's national distribution system. On the basis of this knowledge, the court held that the manufacturer and the exporter indirectly served and derived benefits from the national marketing of their product. Therefore, jurisdiction was proper under *World-Wide Volkswagen*. (*Nelson, supra*, 717 F.2d at pp. 1126-1127 & fn. 7.)

The stream of commerce theory approved in *World-Wide Volkswagen* has also been applied to component part manufacturers. (See *Rockwell, supra*, 553 F.Supp. 328; *Volkswagenwerk, A.G. v. Klippan GmbH* (Ala. 1980) 611 P.2d 498 [hereafter *Klippan*]; cf. *Hedrick v. Daiko Shoji Co., Ltd., Osaka* (9th Cir. 1983) 715 F.2d 1355.)² In fact, the court in *World-Wide Volkswagen* cited a component parts case, *Gray v. American Radiator & Standard Sanitary Corp.* (Ill. 1961) 176 N.E.2d 761, as support for the proposition that jurisdiction over a nonresident defendant is constitutional where the defendant "delivers its products into the stream of commerce with the expectation that they will be purchased in the forum State." (*World-Wide Volkswagen, supra*, 444 U.S. at p. 298.) As *Gray* illustrates, the stream of commerce theory is not relevant solely to manufacturers of finished products, but is equally applicable to manufacturers of component parts whose products are incorporated into finished products sold in the forum state. (See *Gray, supra*, 176 N.E.2d at p. 766; see also *Buckeye Boiler, supra*, 71 Cal.2d at pp. 902-903.)

The plaintiff in *Gray* sued an Ohio manufacturer, Titan Valve Manufacturing Company, for injuries sustained when a hot water heater containing a Titan safety valve exploded. The accident occurred in Illinois. The hot water heater was manufactured in Pennsylvania by American Radiator & Standard Sanitary Corp.

² In *Hedrick*, the Ninth Circuit applied the stream of commerce theory to a foreign component part manufacturer that produced a splice used on an ocean-going carrier. The court held that jurisdiction was proper because "[t]he splice caused an injury... in a port that was within the expected service area of [the carrier's] customers." (*Hedrick, supra*, 715 F.2d at p. 1358.) The splice at issue in *Hedrick* was used, but not sold, in the forum state.

In contrast, the component parts in *Rockwell* and *Klippan* and the valve assemblies at issue here were sold in the forum state as part of finished products. Therefore, jurisdiction was proper under *World-Wide Volkswagen's* requirement that the manufacturer "deliver[] its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum state." (*World-Wide Volkswagen, supra*, 444 U.S. at p. 298, emphasis added.) It is doubtful that the mere expectation of use in the forum is sufficient to establish minimum contacts under *World-Wide Volkswagen*.

and was sold to an Illinois consumer "in the course of commerce." (*Gray, supra*, 176 N.E.2d at p. 764.)

Titan neither sold the safety valve in Illinois nor delivered the valve into the state. Nevertheless, the court inferred that Titan's "commercial transactions" elsewhere resulted in a substantial purchase in Illinois of products containing Titan safety valves. Titan enjoyed a benefit, albeit indirect, from the protection of Illinois law vis-a-vis "the marketing of hot water heaters containing its valves." (*Id.*, at p. 766.) Therefore, Titan was subject to personal jurisdiction in Illinois. (*Id.*, at p. 767.)

III.

Each party to this dispute relies on *World-Wide Volkswagen* to support its position. Cheng Shin argues that the stream of commerce doctrine, approved in *World-Wide Volkswagen*, applies to Asahi as a manufacturer of component parts. Asahi, on the other hand, contends that there is no basis for jurisdiction in California other than the foreseeability that its product would enter the state. Asahi argues that such foreseeability is insufficient to establish jurisdiction under the rule in *World-Wide Volkswagen*.

Contrary to Asahi's assertions, the facts of this case are not analogous to the situation in *World-Wide Volkswagen*. In *World-Wide Volkswagen*, the car was sold in New York and driven to the forum state by the consumer. Its presence in the forum state was fortuitous. Asahi's valve assembly, on the other hand, was sold in the forum state as part of a finished product. It reached California in the stream of commerce. (See *World-Wide Volkswagen, supra*, 444 U.S. at p. 298; *Nelson, supra*, 717 F.2d at p. 1126; *Gray, supra*, 176 N.E. 2d at p. 766.) Therefore, the stream of commerce rule announced in *World-Wide Volkswagen* provides a possible basis for jurisdiction. (See *World-Wide Volkswagen, supra*, 444 U.S. at pp. 297-298.)³

³ The distinction between the foreseeability of use in the forum and the expectation of sale in the forum is critical to the rationale of *World-Wide Volkswagen*. (*Id.*, at pp. 296-298.) The dissent ignores this

Asahi has no offices, property or agents in California. It solicits no business in California and has made no direct sales here. However, Asahi's indirect business here, through Cheng Shin and others, is substantial. (See *ante*, p. C-2 [typed maj. opn. at pp. 2-3].) Moreover, Asahi knew that some of the valve assemblies sold to Cheng Shin would be incorporated into tubes sold in California.⁴ Given the substantial nature of Asahi's indirect business

distinction. (See dis. opn., *post*, at pp. C-20, fn. 1 [typed dis. opn. at pp. 1, 3].) Specifically, the dissent rejects the argument that jurisdiction is proper in light of Asahi's expectation that its products would be sold in California. (Dis. opn., *post*, at p. C-20 [typed dis. opn. at pp. 3-4] According to the dissent, such an argument mistakes foreseeability for intent and adopts the position advocated by Justice Marshall in his dissenting opinion in *World-Wide Volkswagen*. (Dis. opn., *post*, at p. C-20, fn. 1 [typed dis. opn. at p. 3].)

However, the majority in *World-Wide Volkswagen* specifically held that jurisdiction is proper where a corporation "delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum State." (*World-Wide Volkswagen*, *supra*, 444 U.S. at pp. 297-298, emphasis added.) In contrast, Justice Marshall argued in his dissenting opinion that although the automobile at issue in *World-Wide Volkswagen* was not sold, but only used in the forum state, jurisdiction was proper because the nature of automobiles is such that defendants could have foreseen that a substantial portion of the cars they sold would travel outside New York. (*Id.*, at p. 314 (dis. opn. of Marshall, J.).)

Unlike Justice Marshall's dissent, today's decision is not based on a theory of foreseeability of use. Instead, jurisdiction is based on the finding that Asahi delivered its valve assemblies into the stream of commerce with the expectation that they would be incorporated into products sold to consumers in California.

⁴ The affidavit of one of Cheng Shin's managers declares that "[i]n discussions with Asahi regarding the purchase of valve stem assemblies the fact that my Company sells tubes throughout the world and specifically the United States has been discussed. I am informed and believe that Asahi was fully aware that valve stem assemblies sold to my company and to others would end up throughout the United States and in California." Asahi does not claim to have been unaware that some of its valve assemblies sold to Cheng Shin would be incorporated into tubes sold in California. Instead, it argues that "Asahi has never contemplated

with California, and its expectation that its product would be sold in the state, Asahi "should reasonably [have] anticipate[d] being haled into court [here]." (*World-Wide Volkswagen*, *supra*, 444 U.S. at p. 297.)

When Asahi sold valve assemblies to Cheng Shin with knowledge that they would be placed in tubes sold in California, it purposefully availed itself of the California market and the benefits and protections of California's laws. (*Plant Food Co-op v. Wolfkill Feed & Fertilizer* (9th Cir. 1980) 633 F.2d 155, 159-160; *Nelson*, *supra*, 717 F.2d at p. 1126; *Gray*, *supra*, 176 N.E.2d at p. 766; cf. *DeJames*, *supra*, 654 F.2d at p. 285.)⁵

Although Asahi did not design or control the system of distribution that carried its valve assemblies into California, Asahi was aware of the distribution system's operation, and it knew that it would benefit economically from the sale in California of products incorporating its components. (See *Nelson*, *supra*, 717 F.2d at pp.

that its limited sales of tire valves to Cheng Shin in Taiwan would subject it to lawsuits in California."

⁵ The dissent relies on a percentage of income approach to argue that Asahi did not purposefully avail itself of the California market. The dissent speculates that sales of valve assemblies incorporated in Cheng Shin's California-bound products represented no more than .25 percent of Asahi's gross income. However, the numerical corollary to this "miniscule" percentage is the sale of 270,000 Asahi valve assemblies in California in the years 1978 through 1982.

Although this numerical corollary, like the dissent's income percentage, is based on "sheer speculation," Cheng Shin also presented evidence that at least 18 percent of the tubes sold in a particular California motorcycle supply shop contained Asahi valve assemblies. (See *ante*, at p. C-2, fn. 1 [typed maj. opn. at p. 3].) The trial court could reasonably have inferred that this percentage reflected the percentage of Asahi valves found in tubes sold throughout the state. A statewide presence of this magnitude does not constitute the sort of "isolated occurrence" that the court in *World-Wide Volkswagen* found would be an insufficient basis for jurisdiction. (See *World-Wide Volkswagen*, *supra*, 444 U.S. at p. 297.) As the trial court held, the declarations filed in this case established "a volume of Asahi tire valves in this jurisdiction sufficient to indicate that Asahi's availing itself of this market was not an isolated occurrence."

1126-1127.) Thus, Asahi's contacts with the state are sufficient to permit California, consistent with the requirements of due process, to exercise jurisdiction over Asahi in an action arising from those contacts.⁶

However, Ashai argues that jurisdiction is constitutionally improper here because Asahi did not "purposefully avail[] itself of the privilege of conducting activities within the forum State." (*Hanson, supra*, 357 U.S. at p. 253.) According to Asahi, the stream of commerce theory approved in *World-Wide Volkswagen* is not applicable unless the defendant actively attempts to exploit the forum's market. For example, the defendant might either develop an indirect marketing scheme to serve the forum state, or design its product with an eye toward compliance with the forum's rules and regulations.⁷

⁶ Since Cheng Shin's action against Asahi arises from Asahi's forum-related activity, this court need not decide whether Asahi's contact with the state "reaches such extensive or wide-ranging proportions as to make [it] sufficiently 'present' in the forum state to support jurisdiction over it concerning causes of action which are unrelated to that activity." (*Buckeye Boiler, supra*, 71 Cal.2d at pp. 898-899; see also *ante*, at p. C-3 [typed maj. opn. at pp. 4-5].)

⁷ In a related argument Asahi relies on the statement in *Hanson v. Denckla* that "[t]he unilateral activity of those who claim some relationship with a nonresident defendant cannot satisfy the requirement of contact with the forum State." (357 U.S. at p. 253.) Asahi contends that Cheng Shin's sale of tubes in California constituted such "unilateral activity." This argument ignores the plain import of the stream of commerce theory adopted in *World-Wide Volkswagen*.

By definition, in a stream of commerce case the defendant neither sells the product in the forum state nor ships the product into the state. The sale is necessarily made by another entity. Nevertheless, the defendant is subject to jurisdiction because it delivers its products into the stream of commerce "with the expectation that they will be purchased by consumers in the forum State." (*World-Wide Volkswagen, supra*, 444 U.S. at p. 298.) Such a defendant purposefully avails itself of the benefits and protections of the forum's laws and derives an economic benefit from indirect sales to forum residents. (See *Nelson, supra*, 717 F.2d at pp. 1125-1126; *DeJames, supra*, 654 F.2d at p. 285; *Plant Food Co-op, supra*, 633 F.2d at p. 159; see also *World-Wide*

Ashi's argument misreads *World-Wide Volkswagen*. The court in *World-Wide Volkswagen* held that the due process clause "gives a degree of predictability to the legal system that allows potential defendants to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit." (*World-Wide Volkswagen, supra*, 444 U.S. at p. 297.) The court described the function of the "purposefully avails" requirement as follows: "When a corporation 'purposefully avails itself of the privilege of conducting activities within the forum State,' [citation], it has clear notice that it is subject to suit [in the forum], and can act to alleviate the risk of burdensome litigation by procuring insurance, passing the expected costs on to customers, or, if the risks are too great, severing its connection with the State." (*Ibid.*)

That requirement is satisfied where, as here, a component parts manufacturer intentionally sells its products to another manufacturer, knowing that the component parts will be incorporated into finished products sold in the forum state. In such a situation, the component part manufacturer can structure its conduct to protect itself from the risk of liability in the forum state.

World-Wide Volkswagen did not require that the defendant endeavor to market its products in the forum state. It required only that the defendant "delivers its products into the stream of commerce with the expectation that they will be purchased in the forum State." (*World-Wide Volkswagen, supra*, 444 U.S. at p. 298, emphasis added.) In stating this requirement, the court relied on *Gray, supra*, 176 N.E.2d 761. In *Gray*, the nonresident component part manufacturer was subjected to jurisdiction in the forum state on the ground that it received a benefit when products incorporating its parts were sold in the forum. (*Id.*, at p. 766; see *ante*, at p. C-8-9 [typed maj. opn. at pp. 13-14].) The defendant in *Gray* made no efforts to serve the forum's market other than

Volkswagen, supra, 444 U.S. at pp. 297-298.) Therefore, jurisdiction is based on the defendant's forum-related activity, not on the "unilateral activity" of other participants in the chain of distribution. Neither the defendant in *Hanson* nor the defendants in *World-Wide Volkswagen* engaged in such forum-related activity. (See *Hanson, supra*, 357 U.S. at pp. 251-254; *World-Wide Volkswagen, supra*, 444 U.S. at p. 298.)

selling its parts to a manufacturer in "contemplation" of their consumption in the forum. (*Ibid.*)

In *Nelson*, *supra*, 717 F.2d 1120, the Seventh Circuit addressed the issue presented here—whether knowledge of the distribution system satisfies the expectation requirement of *World-Wide Volkswagen*. (*Nelson*, *supra*, 717 F.2d at p. 1126, fn. 7.) The court in *Nelson* held that a foreign manufacturer or distributor need not originate or control the distribution system that brought its product into the retailer's nationwide market. (*Id.*, at p. 1126; see *ante*, at p. C-7 [typed maj. opn. at pp. 11-12].) "[A] critical fact is whether those defendants were aware of that distribution system. If they were aware, they were indirectly serving and deriving economic benefits from the national retail market established by [the retailer], and they should reasonably anticipate being subject to suit in any forum within that market where their product caused injury." (*Ibid.*; see also *Plant Food Co-op*, *supra*, 633 F.2d at pp. 159-160.)

Asahi relies on two cases which involve manufacturers who were more actively involved than Asahi in serving the forum's markets. (See *Rockwell*, *supra*, 553 F.Supp. 328; *Klippan*, *supra*, 611 P.2d 498.) However, neither case holds that an expectation of sales in the forum is insufficient contact under *World-Wide Volkswagen*. Therefore, neither case is inconsistent with *Nelson*.

In *Rockwell*, the federal district court held a foreign component part manufacturer subject to jurisdiction in Pennsylvania on the ground, inter alia, that its component was custom-designed for a foreign manufacturer who served the European and American markets. (*Rockwell*, *supra*, 553 F.Supp. at pp. 333-334.) In *Klippan*, the Alaska Supreme Court held that a foreign seat belt manufacturer was subject to jurisdiction in the state because it designed its product in anticipation of American sales and had knowledge that its product would be incorporated in cars sold throughout the United States. (*Klippan*, *supra*, 611 P.2d at p. 501.)

Of course, *Nelson* is not binding on this court, nor are *Rockwell* and *Klippan*. The rule in *Nelson*, however, is consistent with *World-Wide Volkswagen's* statement that jurisdiction is permissi-

ble under the stream of commerce theory where the defendant expects its products to be sold in the forum state. (*World-Wide Volkswagen*, *supra*, 444 U.S. at pp. 297-298.) Absent such a rule, a major manufacturer who benefits greatly from the sale of a substantial number of its products in California could nevertheless avoid the jurisdiction of the California courts. Therefore, this court finds that the minimum contacts requirement is satisfied where, as here, the manufacturer is aware that a substantial number of its products will be sold in the forum state.

However, the finding that Asahi's contacts with California are sufficient to satisfy the minimum contacts test does not conclude the inquiry. If minimum contacts exist, the due process clause also requires this court to determine whether jurisdiction is fair and reasonable. (*World-Wide Volkswagen*, *supra*, 444 U.S. at p. 292; *Secrest*, *supra*, 33 Cal.3d at p. 672; *Buckeye Boiler*, *supra*, 71 Cal.2d at p. 899.) The court must balance "the inconvenience to the defendant in having to defend itself in the forum state against both the interest of the plaintiff in suing locally and the interrelated interest of the state in assuming jurisdiction." (*Buckeye Boiler*, *supra*, 71 Cal.2d at p. 899; accord *Secrest*, *supra*, 33 Cal.3d at p. 672.)⁸

Asahi argues that California has no interest in exercising jurisdiction here because the California plaintiffs did not name

⁸ In light of the heavy emphasis on defendant-forum contacts in *World-Wide Volkswagen*, the continuing relevance of the fairness determination is unclear. For example, one commentator has noted that having found defendant's contacts sufficient to meet the requirements of *World-Wide Volkswagen*, a court is unlikely to rule that jurisdiction is unreasonable. (Note, *World-Wide Volkswagen Corp. v. Woodson: Minimum Contacts in a Modern World* (1981) 8 Pepperdine L.Rev. 783, 795, fn. 71, 803 & fn. 111.)

Although the court in *World-Wide Volkswagen* noted the relevance of the fairness considerations, i.e., the convenience of the parties and the interest of the forum state (*World-Wide Volkswagen*, *supra*, 444 U.S. at p. 292), it did not apply these considerations to the case at hand. Instead, the court focused on the defendants' conduct and held that conduct insufficient to establish the requisite minimum contacts. (*Id.*, at pp. 297-299.)

Asahi as a defendant. According to Asahi, California has no interest in adjudicating an indemnity dispute between two foreign manufacturers.⁹ However, "[t]he fact that the party seeking indemnity or contribution is a foreign corporation rather than the original injured plaintiff is not a justification for immunizing an ultimately responsible party from liability under the laws of the state where the injury occurred. . . ." (*Klippan, supra*, 611 P.2d at p. 502.) California's interest is not as strong here as it would be if it were directly providing "an effective means of redress for its residents." (*McGee v. International Life Ins. Co., supra*, 355 U.S. at p. 223.) Nevertheless, California's interest in asserting jurisdiction over Asahi in this action is substantial.

First, California has a strong interest in protecting its consumers by ensuring that foreign manufacturers comply with the state's safety standards. (See *Hedrick, supra*, 715 F.2d at p. 1359.) Second, from the standpoint of the orderly administration of its laws, California has an interest in assuming jurisdiction where, as here, "most of the evidence, testimonial and otherwise, is within its borders. . . ." (*Buckeye Boiler, supra*, 71 Cal.2d at p. 899; *Secrest, supra*, 33 Cal.3d at p. 672.) Finally, Cheng Shin has named numerous defendants in its cross-complaint. Thus, there is a possibility of inconsistent verdicts if Asahi cannot be sued in California with the other cross-defendants. Both Cheng Shin and California have an interest in preventing "multiple and possibly conflicting adjudications." (*Buckeye Boiler, supra*, 71 Cal.2d at p. 900.¹⁰)

⁹ Subsequent to the filing of the petition for hearing herein, plaintiffs' complaint was dismissed with prejudice, presumably pursuant to a settlement. The cross-complaints were not dismissed. Asahi asks this court to take judicial notice of the dismissal pursuant to Evidence Code sections 452 and 459. Asahi's request for judicial notice is hereby granted. However, the dismissal has no bearing on the propriety of California's exercise of jurisdiction over Asahi.

¹⁰ Contrary to the dissent's assertion, California's interest in this litigation did not evaporate when plaintiffs dismissed their action with prejudice. (See dis. opn., *post*, at p. C-21 [typed dis. opn. at p. 4].) The cross-complaints in this action are still pending in California. Although plaintiffs have been compensated, the California courts have not yet

Asahi presents no evidence to support its contention that it would be inconvenienced if it is subjected to California's jurisdiction. Presumably, its inconvenience would stem from the inherent burden of litigation in a foreign country. However, this inconvenience does not outweigh California's interest in asserting jurisdiction or Cheng Shin's interest in litigating all its claims in California. Therefore, California's exercise of jurisdiction over Asahi in this action is fair and reasonable.

IV.

For over 10 years, Asahi has profited from its business relationship with Cheng Shin. This relationship has resulted in Asahi's sale of 1,350,000 valve assemblies. Cheng Shin does a substantial business with the United States, particularly with California, and Asahi knew that its valve assemblies would be incorporated into tubes sold by Cheng Shin in California.

Thus, Asahi introduced its products into the stream of commerce with the expectation that they would be sold in California. This conduct satisfies the constitutional requirement of minimum contacts with the forum state. Moreover, jurisdiction in California is fair and reasonable given California's interest in protecting its consumers, and the interests of California and Cheng Shin in avoiding inconsistent results and a multiplicity of litigation. Ac-

determined how liability will be apportioned. For this purpose, California has an interest in asserting jurisdiction over Asahi. Apart from providing a forum to California plaintiffs to ensure that they are compensated, California has an interest in enforcing its safety standards and in deterring Asahi and other foreign manufacturers from shipping defective products into the state.

Moreover, California's interest in enforcing its safety standards is not diminished because plaintiffs "showed no interest in Asahi" (dis. opn., *post*, at p. C-21 [typed dis. opn. at p. 4]). Due to the cost and complexity of effecting service on a foreign defendant, plaintiffs may have made a strategic decision not to pursue Asahi, particularly in light of the numerous domestic defendants who were potentially liable for plaintiffs' injuries. Finally, the fact that Cheng Shin waited a year to file its cross-complaint against Asahi and others is not relevant to California's interest in asserting jurisdiction over Asahi.

cordingly, the trial court's order denying Asahi's motion to quash service of summons was proper. The petition for writ of mandate is denied and the alternative writ is discharged.

BIRD, C.J.

WE CONCUR;

KAUS, J.
BROUSSARD, J.
REYNOSO, J.
GRODIN, J.

ASAHI METAL INDUSTRY CO., LTD.

V.

SUPERIOR COURT

S.F. 24657

DISSENTING OPINION BY LUCAS, J.

I respectfully dissent. The Supreme Court of the United States has authoritatively stated that a foreign corporation's knowledge or foreseeability that its product will be used in another state is not sufficient to subject it to in personam jurisdiction. The corporation must purposefully avail itself of the privilege of conducting activities in the forum state. (*World-Wide Volkswagen Corp. v. Woodson* (1980) 444 U.S. 286, 295-297.) The court stated, "If foreseeability were the criterion, a local California tire retailer could be forced to defend in Pennsylvania when a blowout occurs there." (*Id.* at p. 296.) Speaking to stream-of-commerce situations, the court explained that a corporation may be subjected to jurisdiction where the sale "arises from the efforts of the manufacturer or distributor to serve directly or indirectly, the market for its product in other States, . . ." (*Id.* at p. 297.) In contrast, "the mere 'unilateral activity of those who claim some relationship with a nonresident defendant cannot satisfy the requirement of contact with the forum State.'" (*Id.* at p. 298, quoting *Hanson v. Denckla* (1958) 357 U.S. 235.)

The burden was on Cheng Shin Rubber Industrial Co., Ltd. (Cheng Shin) to establish by competent evidence that in personam jurisdiction existed over Asahi Metal Industry Co., Ltd. (Asahi). (*Messerschmidt Development v. Crutcher Resources* (1978) 84 Cal.App.3d 819, 825.) To my mind Cheng Shin has not carried that burden. Nowhere is it claimed that Asahi had any direct contact with California and no evidence supports the assertion that Asahi intended to serve the California market indirectly. Cheng Shin neglected to indicate what percentage of its total sales are made in the United States, but even assuming that Cheng Shin made 100 percent of its sales in this country, Asahi would have derived no more than .25 percent of its revenues from Cheng Shin's California sales. Cheng Shin presented evidence that other tire manufacturers sell tires in California that incorporate Asahi valves but there is no indication of the number of such tires or what percentage of Asahi's total

revenues are represented by such tires. Even assuming that Asahi derives 10 times as much of its revenues from other manufacturers' California sales as from Cheng Shin's, a matter of sheer speculation, Asahi would only receive 2.5 percent of its total revenue from California. This miniscule percentage belies any suggestion that Asahi intended to serve the California market indirectly. The assertion that Asahi "knew" that its valves were destined for California is predicated on a slender reed—*Cheng Shin's* manager's second-hand understanding. It seems beyond controversy to me that Asahi at best foresaw that some valves would be sold in California but it in no way purposefully availed itself of conducting business in California nor exerted any effort to serve the California market. Under the teaching of *World-Wide Volkswagen Corp.*, then, I would find that California cannot assert in personam jurisdiction over Asahi.

Nonetheless, the majority opinion argues that Asahi's indirect business in California is substantial. (*Ante*, p. C-10 [maj. opn. at p. 15].) The opinion next equates Asahi's knowledge that some of its valves would eventually be sold in California with proof that Asahi purposefully availed itself of the benefit of California's laws.¹ The majority concludes, based on those predicates, that Asahi reasonably should have anticipated being hailed into court in California and that California may properly exercise jurisdiction over Asahi. (*Ante*, p. C-10-11 [maj. opn. at p. 16].)² I do not find that analysis persuasive.

¹ The majority's approach confusing foreseeability with intent and hence finding efforts to serve the forum's market, is similar to that posited by Justice Marshall's dissent in *World-Wide Volkswagen Corp.* and, obviously, rejected by the majority of the Supreme Court. (See *World-Wide Volkswagen Corp.*, *supra*, 444 U.S. at p. 313 (dis. opn. of Marshall, J.).)

² Gauging the propriety of asserting jurisdiction by whether the party should reasonably expect to be hailed into court in the forum is noted in *World-Wide Volkswagen Corp.* but not exclusively relied upon and results in a logical vicious circle. If a forum routinely asserts jurisdiction, foreign parties will expect to be hailed into court there. The more parties expect to be hailed into court, the greater the propriety of the forum's assertions.

Finally, even assuming that minimal contacts exist, I dissent from the conclusion that California may fairly and reasonably exercise jurisdiction. The majority notes that California has an interest in enforcing its safety standards, that most of the evidence is in California, and that the presence of other cross-defendants raises the danger of inconsistent judgments should the Cheng Shin/Asahi dispute be litigated elsewhere. Whatever interest California may have had in asserting jurisdiction over Asahi to enforce its safety standards evaporated when the California plaintiffs settled with all defendants. Even before settlement the California plaintiffs showed no interest in Asahi. Plaintiffs never sought to serve Asahi as an additional defendant although it must have been apparent by August 1982 at the latest that Asahi was potentially liable. Further, Cheng Shin waited over a year from the date it was served with the complaint before cross-complaining against Asahi.

True, the evidence is in California but the principal evidence bearing on Asahi's liability must be the motorcycle tire, an item easily transported to the eventual forum. Although other cross-defendants do remain, Asahi and Cheng Shin presumably entered into a sales contract which may contain terms that are unenforceable in California but which are proper under the laws of Japan or Taiwan. Certainly they did not expect their relationship, *inter se*, to be governed by California. Any disadvantage to the other cross-defendants is balanced by the disadvantage of having California law applied, essentially randomly, to the dispute between Asahi and Cheng Shin.

The net result of the majority's decision is that a Taiwanese corporation can litigate in California against a Japanese corporation that has absolutely no connection with California in a case in which the California plaintiffs have declared themselves made whole. Surely our overburdened courts should be concerned with disputes that more directly involve California.

I would issue the writ.

LUCAS, J.

I CONCUR:
MOSK, J.

Supreme Court, U.S.

FILED

DEC 20 1985

JOSEPH F. SPANIOLO, JR.
CLERK

(2)
No. 85-693

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1985

ASAHI METAL INDUSTRY CO., LTD.
Petitioner,

VS.

SUPERIOR COURT OF CALIFORNIA
IN AND FOR THE COUNTY OF SOLANO
(CHENG SHIN RUBBER INDUSTRIAL CO., LTD.,
REAL PARTY IN INTEREST)
Respondent.

**RESPONSE TO PETITION
FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE
STATE OF CALIFORNIA**

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Respondent.

**RESPONSE TO PETITION
FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE
STATE OF CALIFORNIA**

STATEMENT OF THE CASE

This products liability action arises out of a motorcycle accident that occurred in Solano County, California, in 1978. One California resident, Ruth Moreno, was killed and another California resident, Gary Zurcher, was severely injured when a sudden loss of air in the rear tire of Zurcher's motorcycle caused Zurcher to lose control and fall in front of a truck and trailer rig. Plaintiff, alleging that the motorcycle tire tube was defective, filed suit against, *inter alia*, Cheng Shin Rubber Industrial Company, Ltd. (Cheng Shin), the manufacturer of the tire tube.

Cheng Shin is a Taiwanese corporation that manufactures tire tubes. In manufacturing its product, Cheng Shin purchases tire tube valves from other companies and incorporates them into tire tubes which are marketed throughout the world. Cheng Shin

distributes a substantial number of its tire tubes into the United States. Approximately twenty percent of its sales in the United States are made in California.

Asahi Metal Industries Company, Ltd. (Petitioner), is a Japanese manufacturer of tire tube valves. Petitioner sold 1,350,000 valves to Cheng Shin between 1978 and 1982. All sales occurred in Taiwan, and the valves were shipped from petitioner in Japan to Cheng Shin in Taiwan. However, when these sales were made, petitioner was aware that Cheng Shin would market its tire tubes with petitioner's valve stems in the United States and California.

Cheng Shin is not petitioner's exclusive purchaser of tire tube valves. Other purchasers include Honda, Bridgestone, Kenda, Yokohama, and I.R.C., all of whom market in the United States and California.

In February and March of 1983, two samplings of tire tubes were made at two different California businesses. The February sampling found nearly 250 motorcycle tire tubes with valves manufactured by petitioner. The March sampling disclosed that, of 97 tire tubes inspected, 21 (or 22%) had valves manufactured by petitioner.

Subsequent to plaintiff's filing of this suit, numerous cross-complaints were filed, including one by Cheng Shin seeking indemnity against petitioner. Service was properly made on petitioner in Japan. Petitioner then moved to quash service of the summons and complaint which was denied by the trial court. Petitioner then sought and obtained a Writ of Mandate from the California Court of Appeals ordering the trial court to quash service of the summons and complaint. Cheng Shin then filed a petition for hearing to the Supreme Court of California which was granted. The Supreme Court of California reversed the ruling of the Court of Appeals. This had the effect of reinstating the original ruling of the trial court denying petitioner's motion to quash service of the summons and complaint. In making its determination, the Supreme Court of California cited and followed the precedent established by this Court in *International Shoe Company v. Washington*, 326 U.S. 310 (1945), and its progeny. Specifically, the Court found that petitioner's conduct

and activities were such that it did have sufficient minimum contacts with California and that it was fair and reasonable to subject petitioner to California jurisdiction. (*Asahi Metal Industry Company, Ltd. v. Superior Court* (1985) 39 C.3d 35, 53-54.)

I

INTRODUCTION

Petitioner argues that this Court should grant its petition for a Writ of Certiorari because the decision of the Supreme Court of California is in conflict with both the decisions of this Court and the Federal Courts of Appeal. A thorough review of the facts as they apply to the requirements of due process, however, reveals that no such conflict exists. Such an analysis shows that the Supreme Court of California rendered its decision in accordance with the requirements of due process as set forth by this Court and followed by the Federal Courts of Appeal. As a result, California's exercise of jurisdiction over petitioner comports with the requirements of due process, thus making it unnecessary for this court to review this matter.

II

THE RULING OF THE SUPREME COURT OF CALIFORNIA COMPORTS WITH THE DECISIONS OF THIS COURT

A. The Governing Standards of Jurisdiction as Established by This Court

Over forty years ago, this Court established a two-pronged test to determine whether personal jurisdiction may be properly exercised over a defendant. First, due process requires that the defendant have certain minimum contacts so as to not to "offend 'traditional notions of fair play and substantial justice.'" (*International Shoe, Supra*, p. 316; citing *Milliken v. Meyer*, 311 U.S. 457, 463 (1940).) Subsequently, this Court held that the minimum contacts standard is satisfied where the defendant has "purposefully availed itself of the privilege of conducting activities

within the forum state, thus evoking the benefits and protections of its laws" (*Hanson v. Denckla*, 357 U.S. 235, 253 (1958)).

Second, due process further mandates that, "the relationship between the defendant and the forum must be such that it is 'reasonable . . . to require the corporation to defend the particular suit which is brought there'" (*World-Wide Volkswagen v. Woodson*, 444 U.S. 286, 292 (1980); citing *International Shoe, Supra*, page 317.) It is essential that in all cases, "the 'quality and nature' of the defendants activity is such that it is 'reasonable' and 'fair' to require him to conduct his defense in that state." (*Kulko v. Superior Court*, 436 U.S. 84, 92.) By this requirement, the Due Process Clause imposes a limitation upon state exercise of jurisdiction, "in its role, as guarantor against inconvenient litigation . . ." (*World-Wide Volkswagen, Supra*, page 292.)

However, the due process limitation has been substantially relaxed over the years in light of the developments in modern transportation and communication which have greatly reduced the defendant's burden in defending himself in a state where he engages in an economic activity (*McGee v. International Life Insurance*, 355 U.S. 220, 223 (1957)). Moreover, these historical developments "have only accelerated in the generation since [*McGee*] was decided." (*World-Wide Volkswagen, Supra*, page 293.)

In the end, however, the determination of whether the standards established by due process and *International Shoe* have been satisfied must be decided on a case by case basis. *Perkins v. Benguet Mining Co.*, 342 U.S. 437, 445. These standards are:

"not susceptible of mechanical application; rather, the facts of each case must be weighed to determine whether the requisite 'affiliating circumstances' are present." (*Kulko, Supra*, page 92.)

The focus, therefore, is on "the relationship among the defendant, the forum, and litigation . . . [which becomes] the central concern of the inquiry to personal jurisdiction" (*Shaffer v. Heitner*, 433 U.S. 186, 204 (1977)). As a result, an out-of-state defendant is subject to the jurisdiction of the forum state when he "purposefully directed" his activities at residents of the forum, (*Keeton v.*

Hustler Magazine, Inc., 465 U.S. ____; 79 L.Ed. 2d 790; 104 S.Ct. 1473 (1984)) and the litigation results from the alleged injuries that "arise out of or relate to" those activities, *Helicopteros Nacionales de Columbia, S.A. v. Hall*, 466 U.S. ____; 80 L.Ed. 2d 404; 104 S.Ct. 1868 (1984). *Burger King Corp. v. Rudzewicz*, 471 U.S. ____; 85 L.Ed. 2d 528, 541; 105 S.Ct. 2174 (1985).

Finally, this Court has affirmed the application of these standards to products liability cases (*World-Wide Volkswagen, Supra*, page 291). It is with these principles in mind that the determination of whether petitioner is subject to California jurisdiction can be made.

B. Pursuant to the Standards of Jurisdiction as Established by This Court, Petitioner Has Sufficient Minimum Contacts to Be Properly Subject to California Jurisdiction

1. Petitioner Could Reasonably Anticipate Being Hailed Into Court in California

Petitioner argues that this Court completely rejected foreseeability as a constitutional basis for exercising personal jurisdiction *World-Wide Volkswagen v. Woodson*, 444 U.S. 286 (1980).¹ This simply is not the case. Although the foreseeability argument proffered by respondents in *World-Wide* was rejected, this Court nonetheless provided that foreseeability is not wholly irrelevant to the determination of jurisdiction. As this Court explained,

"The foreseeability that is critical to due process analysis is not the mere likelihood that a product will find its way into the forum state. Rather it is that the defendant's conduct and connection with the forum state are such that he should reasonably anticipate being haled into court there (*Ibid*; citing *Kulko v. California Superior Court*, 436 U.S. 84, 97-98 (1978) and *Shaffer v. Heitner* 433 U.S. 186, 216 (1977)).

A corporation can reasonably anticipate being sued in the forum state when its activities and conduct "purposefully avails [the

¹ See, Petition for A Writ of Certiorari, pp. 7-8.

corporation] of the privilege of conducting activities within the forum state" (*World-Wide, Supra*, page 297; citing *Hanson v. Denckla*, 357 U.S. 235, 253 (1958)).² Thus, where the corporation has a reasonable expectation that its product will be purchased in the forum state, it is amenable to the forum state's jurisdiction. (*Id.*, page 298; citing *Gray v. American Radiator and Standard Sanitary Corp.* (1961) 22 Ill.2d 432, 176 N.E.2d 761.)³

Applying the foreseeability concept as accepted by this Court to the facts of this case, it is clear that petitioner should have reasonably anticipated being haled into court in California. Petitioner is a manufacturer of component parts. As a result, it sits at the beginning of the chain of events leading to the sale to the consumer, which causes petitioner to be dependent on the national and foreign marketplace for the sale and use of its product (*See, Rockwell Int'l Corp. v. Costruzioni* (E.D. Penn; 1982) 553 F.S. 328, 332; quoting *Developments-Jurisdiction*, 73 Harv.L.Rev. 909, 929 (1960)).⁴ Furthermore, in the four year period of 1978 to 1982, petitioner sold a total of 1.35 million tire valves to Cheng Shin. It is uncontroverted that petitioner knew that its valves were being incorporated into Cheng Shin's product and then being placed into the United States and California market places. It is also uncontroverted that twenty percent of

² In *World-Wide*, these factors were applied to an automobile retailer and its wholesale distributor whose businesses were limited to the states of New York, New Jersey, and Connecticut. The manufacturer, Audi, did not seek review in this Court.

³ *Accord, Nelson v. Park Ind., Inc.* (7th Cir. 1983) 717 F.2d 1120; *Hedrick v. Daiko Shoji Co., Ltd.* (9th Cir. 1983) 715 F.2d 1355; *United States v. Toyota* (C.D. CA 1983) 561 F.Supp. 354; *Rockwell Int'l Corp. v. Costruzioni* (E.D. PA 1982) 553 F.Supp. 328, 334; *Tedford v. Grumman American Aviation Corp.* (N.D. MS 1980) 488 F.Supp. 144.

⁴ Thus, a distinction is to be made between retailers, such as Seaway in *World-Wide*, who conduct their businesses in limited markets vis-a-vis the manufacturer who derives economic benefit from a much broader market. (*See, § II.B.2., post, Nelson v. Park Ind., Inc.*, 717 F.2d 1120, — (7th Cir. 1983); *Oswalt v. Scripto, Inc.*, 616 F.2d 191, 200 (5th Cir. 1980); *Novinger v. E.I. DuPont de Nemours & Co., Inc.*, 89 F.R.D. 588, 593 (1981).

Cheng Shin's sales in the United States were made in California. Thus, the placement and sale of petitioner's product in California are not isolated occurrences.⁵

Also, it is undisputed that petitioner sold its product to such worldwide marketers as Honda, Yokohama, Bridgestone, and Kenda, who also make extensive sales in the United States and California market places. It seems highly unlikely that petitioner would be unaware that these worldwide marketers are incorporating petitioner's product into theirs and selling them inside the United States and California.

Finally, a sampling of a California Cycling Shop revealed almost 250 Kenda tire tubes with valve stems manufactured by petitioner. A second sampling, also of a California Cycling Shop, disclosed that of 53 tire tubes Cheng Shin had manufactured, petitioner had manufactured the valves of just under a quarter.

It is uncontroverted that a substantial number of petitioner's product were available in the California marketplace. It is also undisputed that petitioner knew that a significant number of its valves were being marketed in the United States by various tire tube manufacturers. Obviously, Asahi knowingly benefitted economically from the systematic and continued sales of its component part by said manufacturers. Rather than abating or limiting its sales to avoid exposure to suit in the United States and California, petitioner continued to sell its product to such international marketers as Cheng Shin, Honda, Yokohama, Bridgestone, and Kenda.

Where a manufacturer's efforts to sell its products serves, directly or indirectly, "the market for its product in other States,

⁵ In this respect, *World-Wide* is distinguishable. The holding in *World-Wide* relies on the lack of evidence indicating that the presence in Oklahoma of an automobile sold by the defendants therein were anything but an isolated occurrence (*See, pp. 289 and 295*). Unlike *World-Wide*, jurisdiction over petitioner is not based upon "one, isolated occurrence and whatever inferences can be drawn therefrom..." (p. 295). Rather, jurisdiction here is based upon petitioner's intentional efforts to serve the United States, including California, market with its product.

it is not unreasonable to subject it to suit in one of those states if its allegedly defective merchandise has been the source of injury to its owner or to others" (*World-Wide Volkswagen, Supra*, page 297.)⁶ Therefore, it is correct to state that petitioner could reasonably anticipate being sued in California.

2. Petitioner's Purposeful Conduct in Entering Its Product into the Stream of Commerce Headed for California Subjects It to California Jurisdiction

Petitioner argues that the so-called stream of commerce theory of exercising jurisdiction is inapplicable to this case because petitioner did *not* attempt to insulate itself nor did it have an indirect marketing scheme designed to avoid California jurisdiction.⁷ However, this Court has stated that:

"The forum state does not exceed its powers under the due process clause if it asserts personal jurisdiction over a corporation that delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum state." (*World-Wide Volkswagen, Supra*, page 297-298; citing *Gray v. American Radiator & Standard Sanitary Corp.*, 22 Ill.2d 432, 176 N.E.2 761 (1961).)

In *Gray*, it was held that Illinois had jurisdiction over a foreign corporation which did no business in Illinois. The Court reasoned that because use of the corporation's product in Illinois was not isolated and that there existed a "reasonable inference" that there

⁶ Accord, *Nelson, Supra*, p. 1126; *Oswalt, Supra*, p. 200; *Sells v. Int'l Harvester Co., Inc.*, 513 F.2d 762, 763 (5th Cir. 1975); *Coulter v. Sears, Roebuck and Co.*, 426 F.2d 1315, 1318 (5th Cir. 1970); *Duple Motor Bodies, Ltd. v. Hollingsworth*, 417 F.2d 231, 235 (9th Cir. 1969); *Rockwell, Supra*, p. 332-333; *Keckler v. Brookwood Country Club*, 248 F.Supp. 645, 649-650 (1965); *Gray v. American Radiator & Standard Sanitary Corp.*, 22 Ill.2d 432.

Cases have also exercised jurisdiction without requiring the defendant to have knowledge of where his product is going. *Bean Dredging Corp. v. Dredge Tech. Corp.*, 744 F.2d 1081 (5th Cir. 1984); *Bach v. McDonnell Douglas, Inc.*, 468 F.Supp. 521, 526 (1979); *Novinger, Supra*, p. 593.

⁷ See, Petition for A Writ of Certiorari, pp. 8-10.

was substantial use and consumption of the defendant's product in Illinois, defendant benefited from the laws of the state. (*Gray, Supra*, page 766.) Furthermore, jurisdiction was proper because

"With the increasing specialization of commercial activity and the growing interdependence of business enterprises, it is seldom that a manufacturer deals directly with consumers in other States. The fact that the benefit he derives from its laws is an indirect one, however, does not make it any less essential to the conduct of his business; and it is not unreasonable, where a cause of action arises from alleged defects in his product, to say that the use of such products in the ordinary course of commerce is sufficient contact with this state to justify a requirement that he defend here." (*Ibid*)

Applying the reasoning of *World-Wide Volkswagen* and *Gray* to the instant case, it is evident that petitioner is subject to the jurisdiction of California pursuant to the stream of commerce theory. As in *Gray*, petitioner's contacts with California cannot be characterized as isolated occurrences. Petitioner not only sold its tire valves to Cheng Shin, which it knew made extensive sales in California, but petitioner also sold its product to several other worldwide marketers. Moreover, from these transactions, it can be reasonably inferred that there was substantial use and consumption of petitioner's product in California, from which petitioner knowingly benefitted economically. Thus, like the foreign corporation in *Gray*, petitioner has derived and enjoyed the benefits and protections of the laws of California insofar as petitioner has been directly affected by the transactions of its products in California.⁸ (See, *Gray, Supra*, page 766; and *Hanson v. Denckla, Supra*, page 253.)

⁸ Accord, *Nelson, Supra*, p. 1125-26; *Oswalt, Supra*, p. 200; *Sells v. Int'l Harvester Co., Inc.*, 513 F.2d 762, 763 (5th Cir. 1975); *Coulter v. Sears, Roebuck and Co.*, 426 F.2d 1315, 1318 (5th Cir. 1970); *Duple Motor Bodies, Ltd. v. Hollingsworth*, 417 F.2d 231, 235 (9th Cir. 1969); *Rockwell, Supra*, p. 332-333; *Keckler v. Brookwood Country Club*, 248 F.Supp. 645, 649-650 (1965); *Gray v. American Radiator & Standard Sanitary Corp.*, 22 Ill.2d 432.

Petitioner's argument relies on the assertion that since it has neither attempted to insulate itself nor use an indirect marketing scheme to avoid jurisdiction, it is not subject to jurisdiction under the stream of commerce theory.⁹ Analysis of the facts betrays petitioner's theory. By selling its product to such worldwide marketers as Cheng Shin, Honda, and Bridgestone, which it knows makes substantial sales in the United States and California, petitioner has, in effect, insulated itself from the jurisdiction of every state it indirectly serves despite the extensive use of its valves throughout the United States. The result would be that if any one of these valves is defective and an injured consumer would be precluded from seeking redress against the petitioner unless the injured consumer is willing and able to bring suit in Japan. By maintaining this marketing scheme of selling to foreign marketers, petitioner has effectively precluded liability to the American consumer for any injuries caused by its defective product.¹⁰

Moreover, petitioner claims that it does not design its product in anticipation of it being used in the United States.¹¹ Uncontroverted facts substantiate that Asahi sells its valves to Cheng Shin and numerous other manufacturers with the knowledge that it will

Cases have also exercised jurisdiction without requiring the defendant to have knowledge of where his product is going. *Bach v. McDonnell Douglas, Inc.*, 468 F.Supp. 521, 526 (1979); *Novinger, Supra*, p. 593.

⁹ See, Petition for a Writ of Certiorari, p. 9.

¹⁰ In *Bach v. McDonnell Douglas, Inc.*, 468 F.Supp. 521 (1979), jurisdiction was exercised over Martin-Baker, an English manufacturer of airplane ejector seats. In so ruling, the District Court observed that

"(a)ssuming that Martin-Baker does not 'do business' in California, it appears that no United States District Court in that state would have venue. Perhaps it is possible for this matter to be litigated in England. However, the expense and inconvenience caused by trial of a case thousands of miles from the site of take-off, accident, and plaintiff's residence, offends the notion of fairness and makes the Court unwilling to rule out an Arizona forum simply because of the possible alternative of an English forum." (*id.*, p. 527.)

¹¹ See, Petition for A Writ of Certiorari, p. 9-10.

benefit from extensive marketing efforts resulting in sales of petitioner's component product in the United States, including California.

Also, petitioner states that it does not comply with California law in manufacturing its valves.¹² The record demonstrates no citations of such laws in California regulating the manufacture of tire tube valves.

In short, through the utilization of this distribution system, petitioner has developed, or taken advantage of, a marketing scheme which effectively insulates it from the jurisdiction of any of the United States, including California, despite the widespread use of its product throughout this country. The result of this system is that petitioner has placed its product into the stream of commerce with the expectation and knowledge that its product will be marketed in the United States, including California. Because of this purposeful conduct, California has properly exercised jurisdiction over petitioner.

C. It Is Fair and Reasonable for California to Exercise Jurisdiction Over Petitioner

Petitioner asserts that it is not fair and reasonable for it to be subject to California jurisdiction.¹³ Its argument is premised on the allegation that the Supreme Court of California improperly found a California State interest in this action. Petitioner argues that the Court first assumed that California had personal jurisdiction over petitioner in order to determine choice of law. Then, petitioner argues, the Court used choice of law to determine that exercise of jurisdiction was proper.

As the Supreme Court of California correctly points out, having determined that a defendant has sufficient minimum contacts with the forum state, the next determination is whether it is fair and reasonable to subject that defendant to the jurisdiction of the forum state.

¹² See, Petition for A Writ of Certiorari, p. 10.

¹³ See, Petition for A Writ of Certiorari, pp. 10-15.

"The court must balance the 'the inconvenience to the defendant in having to defend itself in the forum state against both the interest of the public in suing locally and the inter-related interest of the state in assuming jurisdiction.'" (*Asahi Metal Industry Co., Ltd. v. Superior Court* (1985) 39 Cal.3d 35, 52.)

The Court states three reasons for its determination that it is fair and reasonable to exercise jurisdiction over petitioner.

"First, California has a strong interest in protecting its consumer by ensuring that foreign manufacturers comply with the state's safety standards." (*Asahi, Supra*, page 53.)

Petitioner asserts that this is an application of California law over it and Cheng Shin.¹⁴

To the contrary, by this statement, the Court recognizes that if California cannot exercise personal jurisdiction over petitioner, California leaves its consumers without redress against foreign manufacturers whose defective products have caused injuries within California. Again, it is uncontroverted that thousands of petitioner's product have entered California through petitioner's marketing procedures. Thus, many California citizens are subject to potential injury and death from defective valves manufactured by the petitioner. If California is unable to exercise jurisdiction over petitioner, an injured plaintiff's only remedy lies in the courts of Japan.¹⁵ Certainly, it is more burdensome for an injured plaintiff to bring suit in Japan than it is for petitioner to defend in California.

Moreover, if petitioner is not subject to California jurisdiction, then it logically follows that no state could constitutionally subject petitioner to its jurisdiction for injuries caused by petitioner's defective product despite the continued use of petitioner's product throughout the United States. Thus, anyone injured by peti-

¹⁴ See, Petition for A Writ of Certiorari, p. 11.

¹⁵ See, Footnote 10, p. 10, ante.

tioner's product in the United States would be forced to litigate in Japan to seek their remedies.¹⁶

The California Supreme Court's second and third reasons for finding it fair and reasonable to subject petitioner to California jurisdiction disclose the interest California has in the orderly administration of its laws and in avoiding the possibility of inconsistent verdicts. (*Asahi, Supra*, page 53.) In this case, although the original plaintiff is no longer involved, two other suits for indemnity arising out of these same circumstances still exist against petitioner. Since these other suits are brought by California corporations, it is apparent that California still maintains a substantial interest in this suit despite plaintiff's absence. Thus, California's interest in avoiding a multiplicity of suits and inconsistent verdicts is further indication that it is fair and reasonable to subject the petitioner to the jurisdiction of California; especially with regard to a matter which not only occurred in California but which also involves numerous California parties.¹⁷

Finally, as the Supreme Court of California points out that petitioner has failed to present any evidence showing that it would be inconvenienced by litigating this matter in California. Thus, the Court was able to properly determine that it was fair and reasonable for California to exercise jurisdiction over petitioner.

D. California's Exercise of Jurisdiction Over Petitioner Is Not Based on the Unilateral Activity of Others

Lastly, petitioner argues that it is not subject to the jurisdiction of California because its product entered this country through the unilateral activity of Cheng Shin.¹⁸ In support of this, petitioner cites *Hanson v. Denckla, Supra*, page 253, as prohibiting such an

¹⁶ See, Jay, "Minimum Contacts" As A Unified Theory of Personal Jurisdiction: A Reappraisal, 59 N.C.L. Rev 429, 446-448 (1981); *Volvo of America Corp. v. Wells*, (C.A. KY, 1977) 551 S.W.2d 826, 828.

¹⁷ See, *Sells v. Int'l Harvester Co.*, 513 F.2d 762 (5th Cir. 1975) in which the Court exercised jurisdiction over a fan blade manufacturer based on exactly the same procedural facts as those involved in this suit.

¹⁸ See, Petition for A Writ of Certiorari, p. 8.

exercise of jurisdiction.¹⁹ However, petitioner omits the sentence following the quoted language:

"The application of that rule will vary with the quality and nature of the defendant's activity, but it is essential in each case that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum state, thus invoking the benefits and protections of its laws (*Ibid*; citing *International Shoe Co. v. Washington*, 326 U.S. 310, 319 (1945)).

The facts of this case indicate that petitioner, by the quality and nature of its conduct and activities has purposefully availed itself of the protection and benefits of California law (*See*, § IB1 and § IB2, *ante*). That petitioner did not deal directly with the California market place does not camouflage the fact that petitioner, when it sold its product to Cheng Shin, knew that its product would be sold in the United States, including California.

Despite the fact that it only indirectly served the California market place, petitioner has nonetheless engaged in economic activity and knowingly benefitted from the marketing efforts of others in the United States and California. Thus, petitioner has purposefully availed itself of the protections and benefits of California law and is therefore properly subject to California jurisdiction (*Hanson v. Denckla*, *Supra*, p. 253; *Gray v. Am. Radiator & Std. Sanitary Corp.*, *Supra*, p. 766).²⁰

E. Conclusion

Based on the foregoing, it is manifestly clear that California's exercise of jurisdiction over petitioner is consistent with the requirements of due process as set forth in *International Shoe* and its progeny. Therefore, this Court should deny this petitioner insofar as it avers that an inconsistency exists between the rulings of this Court and that of the Supreme Court of California.

¹⁹ *Ibid*.

²⁰ *See*, also §§ II.B.1 & 2, *ante*.

III

THE RULING OF THE SUPREME COURT OF CALIFORNIA IS CONSISTENT WITH THE RULINGS OF THE FEDERAL COURTS OF APPEAL

Petitioner maintains that an irreconcilable conflict exists between the State and Federal Courts in applying the standards enunciated by *International Shoe* to foreign manufacturers.²¹ In support of this contention, petitioner cites three Federal cases which, it argues, directly conflict with this and other State Court decisions. Moreover, petitioner states, without citing any authority, that due process requires uniform results in the application of the "minimum contacts" standards required by due process.

This position ignores the clear holding of this Court that due process itself, by its very nature, is a flexible standard (*Board of Curators, University of Missouri v. Horowitz*, 435 U.S. 78, 86; 55 L.Ed.2d 124; 98 S.Ct. 948 (1978) and that higher standards than those required by the due process clause may be adopted. *Lassiter v. Dept. of Social Services of Durham County*, 452 U.S. 18, 33; 68 L.Ed.2d 640; 101 S.Ct. 2153 (1981).

The objective of the "minimum contacts" standards is to preclude courts from exercising jurisdiction beyond the limitations of due process (*World-Wide Volkswagen, Supra*, page 292.) By requiring that individuals have "fair warning that a particular activity may subject [them] to the jurisdiction of a foreign sovereign," [citation] the due process clause

"gives a degree of predictability to the legal system that allows potential defendants to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit" [citation]. (*Burger King Corp. v. Rudzewicz* 471 U.S. ____; 85 L.Ed.2d 528, 540; 105 S. Ct. 2174 (1985))

²¹ *See*, Petition for a Writ of Certiorari, pp. 15-18.

The goal is for these standards to be uniformly applied to the question of jurisdiction, not for the results to be exactly the same in every case and court.²²

Thus, in *Bean Dredging Corp. v. Dredge Tech. Corp.*, 744 F.2d 1081 (5th Cir. 1984), a Washington manufacturer was held subject to jurisdiction in Louisiana despite its having no direct contacts with that State. In *Bean*, Rogers-Olympic was the manufacturer of steel castings in the State of Washington. These castings were then sold to, *inter alia*, Abex Corp. who incorporated these castings into hydraulic cylinders in California. The cylinders were eventually used as part of a dredge constructed by a third company in Louisiana. An action was brought in Louisiana for the allegedly defective dredge. Arguing against Louisiana's ability to exercise jurisdiction over it, Rogers-Olympic pointed out that it had no knowledge of what product its castings would be incorporated into and that it neither sold directly to any Louisiana company nor did it know if any of its castings went to Louisiana. Furthermore, no one from Louisiana ever came to Washington to negotiate with Rogers-Olympic, Rogers-Olympic did not solicit work in Louisiana, and it did not own any property in Louisiana. (*Id.*, page 1082.)

Nevertheless, the Fifth Circuit found Rogers-Olympic subject to Louisiana jurisdiction. Following the lead of *Nelson v. Park Ind., Inc.*, (7th Cir.; 1983) 717 F.2d 1120²³ and *Oswalt v. Scripto*,

²² See, for example, *Bach v. McDonnell Douglas*, *Supra*, 468 F.Supp. at 527 wherein it was stated that "there is no precise formula for application of [minimum contacts] criteria to a particular set of facts."

²³ In *Nelson*, a Hong Kong shirt manufacturer, United, was held subject to Wisconsin jurisdiction. United had manufactured the shirt in Hong Kong, sold it to Bunnan, also a Hong Kong corporation, in Hong Kong. Bunnan, purchasing the shirt for Woolworth, delivered the shirt to a shipper selected by Woolworth.

The Seventh Circuit distinguished *World-Wide* on the basis that United was a manufacturer, an early actor in the stream of commerce, whereas the two *World-Wide* defendants were at the end of the stream of commerce distribution.

The Court held jurisdiction existed because United was aware of the distribution system and indirectly serving and deriving benefits from

Inc., (5th Cir.; 1980) 616 F.2d 191,²⁴ the Court held that even though Rogers-Olympic had no control over the distribution of its product, it had made no attempt to limit the states in which its product would be used and did place its product into the "stream of commerce destined for retail sale in finished products throughout the United States." (*Bean, Supra*, page 1085.)

Likewise, in the present situation, petitioner, despite knowing that its product was headed for California, placed its product into the stream of commerce destined for retail sale and finished products throughout the United States, including California. As with Rogers-Olympic, petitioner made no attempt to limit the states in which its product would be purchased and used.

Petitioner, on the other hand, refers to *Humble v. Toyota Motor Company*, 578 F.Supp. 530 (N.D. Iowa 1982) *aff'd*, 727 F.2d 709, (8th Cir. 1984), which denied jurisdiction based on a fact pattern quite similar to the case at bar, as an example of an inconsistency which due process will not tolerate. The point to be made, however, is not whether the decisions are inconsistent with each other for this Court has recognized that absolute predictability and full assurance as to what conduct will subject a particular defendant to liability cannot be given. (*Burger King Corp. Supra*, p. 540; *World-Wide, Supra*, p. 297.) Rather, the point is that as long as the Courts properly apply the "minimum contacts" standard, a degree of predictability results and due process is not

Woolworth's national retail market. Thus, United should have "reasonably anticipate[d] being subject to suit in any forum within that market where the product caused injury." (*Nelson, Supra*, p. 1125-26.)

²⁴ In *Oswalt*, the Fifth Circuit exercised jurisdiction over Tokai-Seiki, a Japanese manufacturer of cigarette lighters. The lighter in question had been manufactured and sold to Scripto, the American distributor, in Japan. Distinguishing *World-Wide* as the *Nelson* court did, the Court found Tokai-Seiki subject to Texas jurisdiction because Tokai-Seiki knew of and utilized the distribution network of Scripto in the United States to indirectly serve the Texas market (*Oswalt, Supra*; 616 F.2d at p. 200). Moreover, Tokai-Seiki did nothing to avoid sales of its lighters in Texas. Quoting *World-Wide*, the Court found that Tokai-Seiki had delivered its product into the stream of commerce with the expectation that it would be purchased in Texas (*Ibid*).

violated. Thus, even where one Court applies these standards more restrictively than another Court (e.g. by requiring more contacts with the forum state, than another Court would require), no violation of due process results because the determination is made consistently with and within the limitations of the due process clause.

In determining whether to exercise jurisdiction over petitioner, the Supreme Court of California, as did the Federal Courts in *Bean* and *Humble*, acted in accordance with these principles.²⁵ Therefore, no conflict exists between these cases because each of them were determined consistently with the requirements of due process.

CONCLUSION

Petitioner's argument revolves around the assertion that the California Supreme Court's ruling to exercise jurisdiction over it is in violation of the requirements of the due process clause as established by *International Shoe* and its progeny. Petitioner maintains that the Supreme Court of California erroneously applied a foreseeability test, exercised jurisdiction based on activities not done by petitioner, improperly applied the stream of commerce theory of jurisdiction, and wrongfully used California law to determine jurisdiction. Finally, petitioner asserts that the California decision is also in conflict with several Federal Appellate Court decisions.

²⁵ See, § II, ante.

On the contrary, the facts of this case clearly indicate that California's exercise of jurisdiction over petitioner is entirely consistent not only with the decisions of this Court but also with the decisions of the Federal Court of Appeals. In fact, this case simply does not offer any distinguishing factors which sets it apart from the multitude of cases already decided in the Federal and State Courts. Therefore, it is unnecessary for this Court to review this matter.

Respectfully submitted,

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FILED

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JOSEPH F. SPANIOL, JR.
CLERK

(3)
No. 85-693

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1985

ASAHI METAL INDUSTRY CO., LTD.
Petitioner,

v.

SUPERIOR COURT OF CALIFORNIA
IN AND FOR THE COUNTY OF SOLANO
(CHENG SHIN RUBBER INDUSTRIAL CO., LTD.,
REAL PARTY IN INTEREST)
Respondent.

**On Petition for Writ of Certiorari
to the Court of Appeals for the Ninth Circuit**

**REPLY BRIEF OF PETITIONER
IN SUPPORT OF PETITION**

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MINIMUM CONTACTS AND PURPOSEFUL ACTION

Cheng Shin embraces a very liberal interpretation of this Court's expression "purposefully avails".¹

Cheng Shin then reviews a mass of statistics gathered for this case, not the least knowledge of which is charged to Asahi. And from these statistics Cheng Shin reasons that the likelihood of Asahi valves' reaching California is so high that Asahi's sales to Cheng Shin must be regarded as that purposeful action which

¹ "Purposefully avails itself of the privilege of conducting activities in the forum state". *Hanson v. Denckla*, 357 U.S. 235, 253 (1958).

should lead Asahi to anticipate being haled into court in California.

The measure of minimum contacts applied by the court below agrees with this Court's standards only if: (1) Cheng Shin's liberal interpretation of "purposefully avails" is correct, and (2) it is then permissible to judge purposefulness by facts collected after the event and unknown at the time to the party whose purpose is to be judged.

All the statistics gathered by Cheng Shin, accepted and used by the California Supreme Court and reiterated by Cheng Shin here (Response to Petition, pp. 5-7) to show that Petitioner could reasonably anticipate being haled into a California Court in this action are shown clearly to have been gathered for the purpose of this action. None of them were gathered for the purpose of any transaction in tire valves. What these figures would show, however, even if they were chargeable to Petitioner, is no more than the likelihood that Asahi valves would find their way into California. This is "the mere likelihood" which is not adequate to found jurisdiction. *Worldwide Volkswagen*, 444 U.S. 286, 297 (1980).

But the figures are irrelevant because they are not part of Petitioner's knowledge, intent and purpose and cannot represent the state of its mind with respect to availing itself of the benefits and protections of California's laws. What the record shows here as to Petitioner's mind is no more than the vague statement that an affiant is informed (from an unspecified source) and believes that Asahi was aware that (unspecified) Asahi valve stem assemblies would end up in California. (Petition, Appendix C-10, n.4.) This scanty knowledge, expressed with suspicious hesitance and vagueness, certainly raises the matter no higher than the mere likelihood which is inadequate.

APPLICATION OF CALIFORNIA LAW

Cheng Shin evidently recognizes that the intention of the California Supreme Court to apply California law is indefensible. It therefore asserts that the Court did not mean to apply California law but only that California should provide a convenient forum for whatever law applies. The language will not admit of

that evasion. And even if Cheng Shin could bind itself, it could not bind the California courts not to do as their Supreme Court has said in finding state interest and applying California standards to foreign transactions.

Cheng Shin's argument for a convenient forum, moreover, is based upon the hypothesis of suits by injured Californians and not upon the claim actually made here by one alien against another alien over an alien transaction.

THE CONFLICTS

It is true, of course, that not all courts, agreeing upon due process standards, will reach the same results when evaluating the same circumstances under those standards. But the conflicts here are not, as Cheng Shin suggests, the result of that phenomenon. This case presents a flat conflict between a court which says that supplying a component part with awareness that the finished product may reach the United States is enough to found personal jurisdiction over the component maker and courts which say that it is not enough. It is not a matter of permissibly different evaluations but a flat contradiction as to the threshold of constitutional jurisdiction.

With respect to contacts with the forum, the decision in this case directly conflicts with *Humble v. Toyota Motor Co.*, 727 F.2d 709 (8th Cir. 1984), *affg.* 578 F. Supp. 530 (N.D. Ia. 1982), and *DeJames v. Magnificence Carriers, Inc.*, 654 F.2d 280 (3d Cir.), *cert. denied*, 454 U.S. 1085 (1981). The number of additional cases in confrontation depends upon whether one broadens the class to embrace certain cases of finished products² or restricts it to component parts.

With respect to the premature choice of law, the case directly conflicts with *Iowa Electric Light & Power Co. v. Atlas Corp.*, 603 F.2d 1301 (8th Cir. 1979), *cert. denied*, 445 U.S. 911 (1980); *Galgay v. Bulletin Co.*, 504 F.2d 1062 (2d Cir. 1974) and

² Cf., e.g., *Hutson v. Fehr Bros.*, 584 F.2d 833 (8th Cir.), *cert. denied*, 439 U.S. 983 (1978) with *Oswalt v. Scripto, Inc.*, 616 F.2d 191 (5th Cir. 1980).

Southern Machine Co. v. Mohasco Industries, Inc., 401 F.2d 374 (6th Cir. 1968), as well as this Court's decisions in *Hanson v. Denckla*, 357 U.S. 235 (1958); *Shaffer v. Heitner*, 433 U.S. 186 (1977) and *Kulko v. California Superior Court*, 436 U.S. 84 (1978).

Respectfully Submitted

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F I L E D

APR 17 1986

JOSEPH F. SPANIOL, JR.
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October Term 1985

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Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

JOINT APPENDIX

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The following opinions have been omitted in printing this appendix because they appear on the following pages in the appendix to the printed Petition for Writ of Certiorari:

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RELEVANT DOCKET ENTRIES

Superior Court of California
in and for the
County of Solano

(The Superior court does not have a docket sheet containing docket entries. Relevant "docket" entries are by reference to the date of filing and the title of the document).

Apr. 18, 1980	Complaint for Damages, filed San Francisco County Superior Court September 20, 1979;
Aug. 25, 1982	Cross-complaint (of Cheng Shin Rubber Industrial Co., Ltd.);
Dec. 16, 1982	Notice of Motion and Motion to Quash Summons for Lack of Jurisdiction and Inconvenient Forum;
Dec. 16, 1982	Memorandum of Points and Authorities in Support of Motion to Quash Summons for Lack of Jurisdiction;
Dec. 16, 1982	Affidavit of Kazuo Matsuoka in Support of Motion to Quash Service;
Mar. 23, 1983	Memorandum of Points and Authorities in Opposition to Cross-defendants' Motion to Quash;
Apr. 4, 1983	Declaration of Kenneth B. Shepard in Opposition to Motion to Quash Subpoena;
Apr. 6, 1983	Asahi's Reply to Cheng Shin's Opposition to Motion to Quash;
Apr. 6, 1983	Affidavit of Kazuo Matsuoko in Support of Motion to Quash Service;
Apr. 22, 1983	Letter from Richard D. Hoffman to the Honorable Dwight Ely;
Apr. 22, 1983	Letter from Ronald R. Haven to the Honorable Dwight Ely;

Apr. 22, 1983 Order Denying Motion to Quash Summons;
 Mar. 19, 1984 Request for Dismissal with Prejudice;

Court of Appeal of the State of California,
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May 4, 1983 Petition for Writ of Mandate to Compel Trial
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 May 16, 1983 Memorandum of Points and Authorities in
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 mons;
 June 6, 1983 Alternative Writ of Mandate;
 Sept. 15, 1983 Order Granting Petition for Writ of Mandate;

Supreme Court of
 the State of California

Nov. 10, 1983 Hearing Granted;
 Mar. 6, 1985 Cause Called and Argued;
 July 25, 1985 Petition denied, Alternative Writ discharged by
 Bird, C.J., we concur: Kaus, J. Broussard, J.
 Reynoso, J. Grodin, J. I dissent: Lucas, J. I
 concur: Mosk, J.;
 Aug. 27, 1985 Issued Remittitur;
 Mar. 7, 1986 Filed CC of USSC Order Granting Cert.

No. 85-693

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Supreme Court, U.S.

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QUESTIONS PRESENTED

Where a Taiwanese manufacturer marketing its products world-wide contracts for component parts overseas from a Japanese manufacturer which does not engage in any business activity in California, or in the United States, and sues the Japanese manufacturer in a California court for indemnity on account of the settlement of a California product liability tort claim against the Taiwanese manufacturer:

1. Is the mere awareness of the Japanese manufacturer that a substantial number of the Taiwanese manufacturer's finished products are sold in California adequate to establish the requisite contacts giving the California court personal jurisdiction over it?

2. Is the requisite interest of the State of California established by the declared intention of the California Supreme Court to apply California law to the relationship and transactions of the two alien manufacturers and by the assertion of a consequent interest in the orderly administration of California laws?

PARTIES TO THE PROCEEDING

All parties to the proceeding in the Supreme Court of the State of California are named in the caption.

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No. 85-693

In the Supreme Court

OF THE

United States

October Term 1985

ASAHI METAL INDUSTRY CO., LTD.

Petitioner,

vs.

SUPERIOR COURT OF CALIFORNIA IN AND FOR THE
COUNTY OF SOLANO (CHENG SHIN RUBBER INDUSTRIAL
CO., LTD., REAL PARTY IN INTEREST)

Respondent.

**ON WRIT OF CERTIORARI TO THE SUPREME
COURT OF THE STATE OF CALIFORNIA**

PETITIONER'S BRIEF

OPINIONS BELOW

The Superior Court's order is unreported and is reproduced in Appendix A to the Petition. The decision of the Court of Appeal of the State of California was originally reported at 149 Cal.App.3d 30, 194 Cal.Rptr. 741, but was subsequently decertified for publication when the Supreme Court of California granted a petition for hearing, and is reproduced in Appendix B to the Petition. The opinion of the California Supreme Court and dissenting opinion are reported at 39 Cal.3d 35, 216 Cal.Rptr. 385, and reproduced in Appendix C to the Petition.

JURISDICTION

By a final order of July 25, 1985 entered the same date, the Supreme Court of the State of California denied Petitioner's Petition for Writ of Mandate directing the Superior Court for the County of Solano, State of California, to quash summons and complaint served on Petitioner and discharged an alternative writ which had previously been issued by the Court of Appeal of the State of California, First Appellate District. The jurisdiction of this Court was invoked pursuant to 28 U.S.C. § 1257(3) by a petition filed within 90 days thereafter and granted March 3, 1986.

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

California Code of Civil Procedure section 410.10 states:

A court of this state may exercise jurisdiction on any basis not inconsistent with the Constitution of this state or of the United States.

The provision of the United States Constitution involved is the Due Process Clause of the Fourteenth Amendment:

Section 1 . . . nor shall any State deprive any person of life, liberty, or property, without due process of law; . . .

STATEMENT OF THE CASE

A California resident was killed and another injured in a motorcycle accident in California. The accident was allegedly caused by a sudden loss of air and explosion in the rear tire of the motorcycle [Pet. App. C-1].

In consequence a products liability action was filed in California alleging that the motorcycle tire, tube and sealant were defective. The complaint named Cheng Shin Rubber Industrial Co., Ltd. (Cheng Shin), the Taiwanese manufacturer of the tube, and other defendants. Asahi Metal Industry Co., Ltd. (Asahi) was not named as a defendant by the California plaintiff [Pet. App. B-1]. Cheng Shin, in turn, filed a cross-complaint seeking

indemnity from various of its co-defendants and also from Asahi, the Japanese manufacturer of the tube's valve assembly whom Cheng Shin brought in as a third party [Pet. App. C-1-2]. The case against Cheng Shin and the other defendants was settled and dismissed, leaving Cheng Shin's third party action for indemnity [Pet. App. C-16, fn. 9].

The third party action asserted claims on various grounds, including breach of implied and express warranties and disparity of faults, and sought full indemnity or contribution (called equitable indemnity in California),¹ presumably under California law. Asahi moved to quash service of summons but the Superior Court denied the motion and asserted jurisdiction over Asahi for the indemnity claims of Cheng Shin [Pet. App. A].

The Court of Appeal of the State of California then issued a writ of mandate ordering the Superior Court to quash service of summons and complaint on Asahi. The Court of Appeal, relying upon this Court's decision in *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980), and the California Supreme

¹"If plaintiffs are successful in their complaint against cross-complainant, any settlement or judgment thereby would result from the active and primary negligent conduct, the breach of implied and express warranties to cross-complainant, strict liability or other misconduct of cross-defendants, and each of them, or by virtue of the disparity of fault as between cross-complainant and cross-defendants, and each of them, and the passive, secondary and negative negligence and/or other misconduct of cross-complainant, if any there was. Therefore, cross-complainant is entitled to indemnification from cross-defendants, and each of them, by the implied right of indemnification, by right of indemnification, by operation of law or a right of equitable indemnification. . . ." Cross-Complaint, First Cause of Action, Para. VII.

"Cross-complainant's negligence or other breach of duty, if any there was, is comparatively less than the culpable conduct of cross-defendants, and each of them; therefore cross-complainant is entitled to equitable apportionment from cross-defendants, and each of them, by [sic] reason of their wrongful conduct. . . ." Cross-Complaint, Second Cause of Action, Para. II.

Court's decision in *Secrest Machine Corp. v. Superior Court*, 33 Cal. 3d 664 (1983), concluded that Asahi could not reasonably be required to respond to an indemnity claim in California and that the exercise of jurisdiction by a California court would be unfair and unreasonable [Pet. App. B-5-6].

The Supreme Court of California then granted a hearing and reversed the decision of the Court of Appeal, concluding that California could exercise jurisdiction against Asahi for the indemnity claims of Cheng Shin because "the minimum contacts requirement is satisfied where, as here, the manufacturer is aware that a substantial number of its products will be sold in the forum state" [Pet. App. C-15].

The following facts are those relied on or acknowledged by the Court of Appeal and the Supreme Court of California in reaching their decisions.

Asahi is a Japanese corporation. It has no offices, property or agents in California. It solicits no business and makes no sales there [Pet. App. C-10]. It maintains no spare parts and gives no advice on maintenance, sales, or use in California. It does not advertise in California. It has conducted no deliberate economic acts to serve the tire market in California [Pet. App. B-3]. In short, it does not do business in California.

Asahi manufactures valves for tires. Asahi has from time to time in the last ten years sold tire valves for use on motorcycle tire tubes to Cheng Shin in Taiwan and to other alien corporations. Between 1978 and 1982 Asahi sold 1,350,000 valve stem assemblies to Cheng Shin. Sales of tire valves to Cheng Shin in Taiwan in 1981 accounted for 1.24 percent of Asahi's total income for that year. Sales of tire valves to Cheng Shin in Taiwan in 1982 accounted for 0.44 percent of Asahi's total income for 1982 [Pet. App. C-2]. All of the sales of tire valve assemblies to Cheng Shin occurred in Taiwan. All of the shipments were sent from Japan to Taiwan [Pet. App. B-2].

Asahi is not Cheng Shin's exclusive supplier of valve assemblies. Cheng Shin purchases valve assemblies from other suppliers and markets its finished products throughout the world. Tubes sold in California (and presumably the United States) are

marketed by Cheng Shin through a related company, Cheng Shin Tire USA, Inc., a California corporation. Cheng Shin states that approximately 20% of its total United States sales (an unknown number) are in California [Pet. App. B-2-3].

Asahi "did not design or control the system of distribution that carried its valve assemblies into California" [Pet. App. C-11]. Asahi knew, however, that Cheng Shin sold its tubes throughout the world, including the United States, having acquired this knowledge from Cheng Shin. Thus Asahi was aware of the probability that some of the tire valve assemblies it sold to Cheng Shin in Taiwan would end up in California [Pet. App. C-10, fn. 4].

Cheng Shin has also relied upon a declaration of one of its lawyers, referred to in both opinions below, as to the number of Asahi valves found on tubes of other manufacturers in a certain store in California [Pet. App. B-3 and C-2, fn. 1]. If his identifications were correct, nevertheless the facts are not connected to the argument in this case by any record that Asahi was aware of the destination of the valves he counted.

SUMMARY OF ARGUMENT

I. A. This case presents a question of the reasonable assertion of a State's sovereign power over citizens and residents of foreign sovereign states and its answer must consider the extent to which foreign sovereigns will accept and enforce the State's judgments.

I. B. Jurisdiction over non-residents is determined by general principles imposed by the Due Process Clause. Those principles are that the defendant must have meaningful "contacts, ties or relations" with the forum; that there be "some act by which the defendant purposefully avails itself of the privilege of conducting activity within the forum state, thus invoking the benefits and protections of its laws"; that the suit not offend "traditional notions of fair play and substantial justice"; and, in the case of "specific jurisdiction", that the inquiry focus upon the "relationship among the defendant, the forum and the litigation".

I. C. Under the general principles a number of tests have been recognized by the Court which are applicable to the circumstances here. In combination, they provide criteria for determining when a State can impose its laws on nonresident aliens. (1) The alien must conduct activity within the State, thus seeking benefits of its laws beyond the privilege of being sued there. (2) The unilateral activity of another is not enough. (3) The alien's acts should reasonably lead it to anticipate suit there. (4) To found jurisdiction, a contract must have a substantial connection with the State. (5) One who delivers products into the "stream of commerce" expecting them to be purchased in the State may be sued there for their defects. (6) But mere foreseeability is not sufficient to support jurisdiction. (7) The additional requirement of fair play and substantial justice involves the burden on the defendant, the plaintiff's interest in obtaining relief and the State's interest in the dispute, which cannot be established by its desire to apply its own law or to secure the welfare of its residents where there are alternative reasonable means at hand.

I. D. International law acts as a limitation on a State's power to exercise jurisdiction. Under international law, which is a part of our law, the enforcement of foreign judgments is a matter of comity and therefore a matter of discretion depending upon a variety of circumstances. The general principles governing jurisdiction have been developed mainly in interstate cases and must be applied with due consideration for differences in the international setting, where our Constitution cannot also control reception and enforcement.

II. A. The claim here is for indemnity, in part explicitly on contractual grounds, which must ultimately rest on the ground that Asahi did not furnish what was expected in a sales transaction. For the purpose of jurisdictional analysis, the transaction involved may be classified under the standards of Western law as contractual.

II. B. In contract cases the Court has focused especially on the contract's connection with the State, the extent of purposeful activity in the State and the anticipation of litigation there. When this case is compared with others, it is seen that the contract does not have a substantial connection with California, there is no

purposeful activity by Asahi in California, and there is nothing to support the conclusion that Asahi should have anticipated being haled into a California court.

II. C. If this case is viewed as a product liability case, application of the "stream of commerce" theory of jurisdiction to the facts does not afford a basis for California to assert jurisdiction over Asahi. The Court, in *World-Wide Volkswagen v. Woodson*, rested the doctrine on a foundation of conduct by which the defendant "purposefully avails itself of the privilege of conducting activities within the forum State"; it has no application here where no such purpose is shown. Asahi has not attempted, directly or indirectly, to engage in the economic activity which would make it fair and unburdensome to litigate in California. The California Supreme Court thought awareness of sales in the forum State sufficient. But this Court has held that foreseeability is not enough, explaining that purposeful activity leading to the reasonable anticipation of litigation in the forum State is required. Foreseeability by itself is merely a vision of the future, judicially implanted in the corporate mind, and neither an activity in nor contact with the forum State. Likewise, the unilateral activity of another, here the Taiwanese manufacturer, is not a contact of Asahi with the forum State. Thus Asahi does not have the necessary minimum contacts and would not have such contacts even if the injured California plaintiffs were bringing suit against it.

II. D. Even if sufficient minimum contacts existed, the exercise of jurisdiction still must not offend traditional notions of fair play and substantial justice. The applicable tests are (1) burden on the defendant, (2) interest of the plaintiff and (3) the forum State's interest in the dispute. While the obvious burden to the Far Eastern defendant of litigating in California must be weighed against a plaintiff's interest, no such interest was shown by the record or recognized as a factor by the California Supreme Court. Its notion that the State must pursue its interest in consumer protection by the application of California law to transactions between a Taiwanese and a Japanese ignores that consumers are protected by the exercise of jurisdiction over those who manufacture, import and sell finished products. The California Supreme

Court found supplemental interests of California in the administration of its laws and a possibility of inconsistent verdicts, again assuming the application of its own law and a consequent interest in the verdict as to Asahi. The application of California law here would itself violate due process. But choice of law should not have been reached at this point, as a finding of State interest for jurisdictional purposes cannot be based upon the choice of forum State law.

III. This case does not measure up to the well-known general principles. The supposed contact, tie or relationship of Asahi with California here was much less substantial than the contacts found insufficient in past cases and inadequate to suggest under any available standard that they should have led a Japanese corporation in the circumstances to expect it could be subjected to jurisdiction in California. The assertion of that jurisdiction does not accord Asahi fair play and substantial justice, having regard to the burden upon the defendant, the opportunity of the Far Eastern plaintiff to sue in its own hemisphere, and the inappropriateness of applying California law or choosing a California court to administer Far Eastern law. Neither Asahi nor the litigation over a foreign transaction has a meaningful relationship to the forum. The relationships of defendant, litigation and forum are therefore too attenuated to sustain jurisdiction. The assertion of jurisdiction on such an attenuated basis is likely to produce judgments which overstep the boundaries of international credibility and result in futility and illusion.

ARGUMENT

I.

WELL SETTLED BASIC PRINCIPLES AND PARTICULAR TESTS ARE APPLICABLE HERE WITH DUE REGARD TO THE DISTINCTION BETWEEN DOMESTIC AND INTERNATIONAL CASES

A. The case concerns the reasonable extent of a State's power over an alien in its own foreign country

The broad question presented by this case is the extent to which a State can impose its laws and process upon an alien not present here. It concerns the sovereign reach of a member State of this union, not to grasp the resident of another State, but to grasp an alien over the higher "sovereignty barrier"² of its own foreign sovereign nation. By asserting jurisdiction the State is claiming the right to make a binding determination of the legal quality of an alien defendant's conduct abroad. The question is therefore what is a reasonable assertion of authority of members of a community of sovereign nations beyond their borders. If the answer is to be realistic rather than pretentious, some account must be taken of what judgments, and especially default judgments,³ other nations, in the exercise of their own sovereignties, will recognize as reasonable and thus accept and enforce.⁴ Specifically, to what extent will foreign sovereigns accept and enforce

² See *Insurance Co. of North America v. Marina Salina Cruz*, 649 F.2d 1266, 1272 (9th Cir. 1981); *Pacific Atlantic Trading Co. v. M/V Main Express*, 758 F.2d 1325, 1330 (9th Cir. 1985).

³The ultimate compulsion and relevant standards relate to default judgments. The distinction is significant because of national doctrines such as that expressed in the Restatement of Conflict of Laws, Second, § 96, under which a judgment may be enforced only because the defendant appeared abroad for the purpose of contesting personal jurisdiction and lost the point. See *York v. Texas*, 137 U.S. 15 (1890).

⁴"Even though an extranational judgment may have satisfied the standards of forum law, it will in general be denied recognition if it fails to comply with the jurisdictional requirements of its own law." Ehrenzweig, *Conflict of Laws* 164 (1962).

the determination by a State that it can regulate persons outside its territory?

B. The principles governing jurisdiction are well settled

The defendant may not be subjected to binding judgments of a forum with which it has not established sufficient or meaningful "contacts, ties, or relations". *International Shoe Co. v. Washington*, 326 U.S. 310, 319 (1945); *Shaffer v. Heitner*, 433 U.S. 186, 213 (1977); *Burger King Corp. v. Rudzewicz*, ____ U.S. ____, 85 L. Ed. 2d 528, 540 (1985). Those contacts must also be such that the maintenance of the suit against the absent defendant not offend "traditional notions of fair play and substantial justice". *International Shoe Co. v. Washington*, *supra*, at 316; *World-Wide Volkswagen Corp. v. Woodson*, *supra*, at 292; *Shaffer v. Heitner*, *supra*, at 207. In more concrete terms the Court has always emphasized that the requisite contacts cannot stem from the unilateral activity of those who claim some relationship with a nonresident defendant and that there must, rather, be "some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws." *Hanson v. Denckla*, 357 U.S. 235, 253 (1958); *Kulko v. Superior Court*, 436 U.S. 84, 93-94 (1978); *Burger King Corp. v. Rudzewicz*, *supra*, at 542. These

"Since, except for constitutional compulsion, this concept of international or interstate jurisdiction is one determined under the law of each forum rather than under the law of the rendering court or under a super-law, it seems appropriate to examine the problem from the standpoint of the recognizing court itself, instead of speaking in absolute terms of the existence of such jurisdiction in the rendering court. [footnote omitted]", *Id.* 206.

"As between nations, ideas of 'jurisdiction in the international sense' determine whether one nation will recognize another's assertion of judicial power. 'Can the island of Tobago pass a law to bind the rights of the whole world?' asked Lord Ellenborough in the famous case of *Buchanan v. Rucker*, 9 East 192, 103 Eng. Rep. 546 (K.B. 1808). He answered his rhetorical question with another question, 'Would the world submit to such an assumed jurisdiction?' " Cramton, Currie and Kay, *Conflict of Laws*, 521-22 (1981).

See also Scoles and Hay, *Conflict of Laws* 259-60 (1984).

principles govern all assertions of jurisdiction, whether general or specific.

No claim is made that Asahi is subject to general jurisdiction in California. The question is therefore limited to the existence of "specific jurisdiction" and the inquiry for the necessary "contacts, ties or relations" therefore focuses more narrowly upon the "relationship among the defendant, the forum and the litigation". *Shaffer v. Heitner*, *supra*, at 204; *Rush v. Savchuk*, 444 U.S. 320, 327 (1980); *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 775 (1984); *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414 (1984).

C. The particular criteria for testing jurisdiction in the circumstances here have been generally agreed

In addition to the requirement of purposeful activity by the defendant in the forum state, rather than any unilateral activity of another, the Court has formulated a number of other particular tests to be applied to the facts in a variety of cases, some of which have more, and some less, application to particular circumstances. The following are all those which are applicable in examining the circumstances of the present case. All have been repeatedly stated and appear from various cases to be unanimously recognized, although the views of the Justices have differed in their application.

1. "[I]t is essential in each case that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws."⁵ It is inherent in the logic of this statement that the necessary "act" not be an event so remote from the protection of the State that the defendant could reasonably be thought to seek no other benefit or protection than the dismissal of the suit against him.

⁵*Hanson v. Denckla*, *supra*, at 253; *Burger King Corp. v. Rudzewicz*, *supra*, at 542; see also *Shaffer v. Heitner*, *supra*, at 216; *Kulko v. Superior Court*, *supra*, at 94.

2. "The unilateral activity of those who claim some relationship with a nonresident defendant cannot satisfy the requirement of contact with the forum State."⁶

3. The defendant's conduct and connection with the forum State must be such that the defendant "should reasonably anticipate being haled into court there."⁷

4. To support jurisdiction, a contract must have a "substantial connection" with the forum State.⁸

5. The forum State may exercise "personal jurisdiction over a corporation that delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum State" where the suit arises from a defect in those products.⁹

6. But mere foreseeability of causing injury in the forum State is not a "sufficient benchmark for personal jurisdiction"; "the foreseeability that is critical to due process analysis . . . is that the defendant's conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there."¹⁰

⁶*Hanson v. Denckla*, *supra*, at 253; *Kulko v. Superior Court*, *supra*, at 93-94; *World-Wide Volkswagen Corp. v. Woodson*, *supra*, at 298; *Burger King Corp. v. Rudzewicz*, *supra*, at 542.

⁷*World-Wide Volkswagen Corp. v. Woodson*, *supra*, at 297; *see also Shaffer v. Heitner*, *supra*, at 216; *Kulko v. Superior Court*, *supra*, at 97-98; *Keeton v. Hustler Magazine, Inc.*, *supra*, at 781; *Calder v. Jones*, 465 U.S. 783, 790 (1984).

⁸*McGee v. International Life Insurance Co.*, 355 U.S. 220, 223 (1957); *Hanson v. Denckla*, *supra*, at 252, 253; *Burger King Corp. v. Rudzewicz*, *supra*, at 545; *cf. Shaffer v. Heitner*, *supra*, at 213.

⁹*World-Wide Volkswagen Corp. v. Woodson*, *supra*, at 298; *Burger King Corp. v. Rudzewicz*, *supra*, at 541.

¹⁰*World-Wide Volkswagen Corp. v. Woodson*, *supra*, at 295-97; *Burger King Corp. v. Rudzewicz*, *supra*, at 542.

7. Where sufficient contacts with the forum State are found, the requirement of "fair play and substantial justice"¹¹ involves "the burden on the defendant", "the plaintiff's interest in obtaining convenient and effective relief," and "the forum State's interest in adjudicating the dispute".¹² But the fact that the forum State may desire to apply its law to the case, or even the fact that its law is obviously likely to apply, apart from an explicit choice by the parties, is not a factor in establishing the legitimate interest of the State in asserting jurisdiction.¹³ And the State's interest in securing the welfare or compensation of its residents is not sufficient to justify the burdens on a nonresident defendant when the State has other reasonable means at hand to secure those objectives.¹⁴

D. International standards are a further constraint on a State's power to exercise jurisdiction in an international case

International law "in its widest and most comprehensive sense . . . is part of our law".¹⁵ Therefore the enforcement of judgments of the courts of another nation is a matter of "the comity of nations",¹⁶ a recognition allowed with due regard to "international

¹¹*International Shoe Co. v. Washington*, *supra*, at 320.

¹²*World-Wide Volkswagen Corp. v. Woodson*, *supra*, at 292; *Burger King Corp. v. Rudzewicz*, *supra*, at 543. Additional factors have been cited which are not relevant to international cases.

¹³*See Hanson v. Denckla*, *supra*, at 254; *Shaffer v. Heitner*, *supra*, at 216; *Kulko v. Superior Court*, *supra*, at 98; *Keeton v. Hustler Magazine, Inc.*, *supra*, at 778; *Burger King Corp. v. Rudzewicz*, *supra*, at 546-47.

¹⁴*See Kulko v. Superior Court*, *supra*, at 98.

¹⁵*Hilton v. Guyot*, 159 U.S. 113, 163 (1895). It is also part of the law of California. "International law is a part of our law and as such is the law of all States of the Union." *Skiriotes v. Florida*, 313 U.S. 69, 72-73 (1941).

¹⁶"No law has any effect, of its own force, beyond the limits of the sovereignty from which its authority is derived. The extent to which the law of one nation, as put in force within its territory, whether by executive order, by legislative act, or by judicial decree, shall be allowed to operate within the dominion of another nation, depends upon what

duty and convenience".¹⁷ The Court, in *Hilton v. Guyot*, *supra*, at 164, quoting Justice Story,¹⁸ pointed out that the exercise of comity "is, and ever must be, uncertain [and] that it must necessarily depend on a variety of circumstances". It went on to cite numerous cases illustrating how various nations might or might not recognize and enforce foreign judgments in varying circumstances, before providing in its own judgment an example, by granting only a limited recognition of the French judgment before it.

Courts and legal writers have collected abundant authority on the reluctance of nations to grant indiscriminate credit to foreign judgments without regard to their own views of minimum standards of justice.¹⁹ The disregard of those considerations leads, at home, to the delusion of plaintiffs who believe that a default judgment here will be a thing of value and tends abroad to make our judgments suspect of pretension. In stressing the significance of enforcement abroad we do not contend that jurisdiction in a particular case depends on the attitude of the nation where the

our greatest jurists have been content to call 'the comity of nations.' " 159 U.S. at 163.

¹⁷"Comity," in the legal sense, is neither a matter of absolute obligation on the one hand, nor of mere courtesy and good will upon the other. But it is the recognition which one nation allows within its territory to the legislative, executive, or judicial acts of another nation, having due regard both to international duty and convenience, and to the rights of its own citizens or of other persons who are under the protection of its laws." 159 U.S. at 163-64.

¹⁸Story, Commentaries on the Conflict of Laws, § 28 (1834)

¹⁹ See generally, *Hilton v. Guyot*, *supra*; von Mehren & Trautman, "Recognition of Foreign Adjudications: A Survey and a Suggested Approach", 81 Harv. L. Rev. 1601 (1968). We discount extreme views of non-recognition such as those of The Netherlands, *id.* 1602, or of France, *id.* 1613. Important and accessible examples, however, are found in systems close to our own, such as in England, see Stone, "The Recognition and Enforcement in England of Foreign, Personal and Proprietary Judgments" (1983) 4 Lloyds Maritime & Commercial Law Quarterly 1, 10-13, and Canada, see authorities collected in Scoles & Hay, Conflict of Laws, 260, n. 6 (1984).

judgment in that case will need to be enforced. What we do urge is that the assertion of power must show a respectful regard for conservative and reasonable views of national power which are current among others in our international community.

The general principles by which a State's power to regulate conduct outside its borders is to be determined have been developed mainly in the setting of relations between the member states of our federal union. In the domestic setting the Full Faith and Credit Clause is an important factor and our Constitution, as interpreted by this Court, controls both ends of the axis of power, that is, not only the right of a forum State to assert power but the duty of another State to accede to it and enforce it.²⁰ The Court has referred to the roots of the domestic standards in our constitutional history and the historic view that "the Nation was to be a common market". *World-Wide Volkswagen Corp. v. Woodson*, *supra*, at 293. In only a few instances, however, has this Court had to consider the problem of State power in the international setting, where, although the Full Faith and Credit Clause is not involved, the Due Process Clause of either the Fifth Amendment or the Fourteenth Amendment remains central.²¹ The general principles under the Due Process Clause have been laid down by the Court principally in interstate cases. They are also applicable in international cases, with appropriate consideration for the circumstance that the Constitution does not control the obligation of a foreign sovereign to accept and enforce another sovereign's questionable exercise of power. See von Mehren and Trautman, *Recognition of Foreign Adjudications: A Survey and a Suggested Approach*, 81 Harv. L. Rev. 1601, 1608-10 (1968).

²⁰ "In the United States, federal limitations on state adjudicatory power afford an opportunity, unavailable at the international level, for a rational allocation of judicial business among the several states." Cramton, Currie and Kay, Conflict of Laws, 522.

²¹ The Due Process Clause of the Fourteenth Amendment is applicable here because State action is involved. Nevertheless, because the assertion of jurisdiction here is international, rather than interstate, the limits encountered would be the same for a State court and a Federal court and the scope of the two clauses in this setting should be identical.

II.

THE JURISDICTION ASSERTED BY CALIFORNIA CONFLICTS WITH THE ACCEPTED CONSTITUTIONAL TESTS

A. The substance of this case is a foreign relationship governed by foreign contract relations under foreign law

This case involves a supply or sales contract and the rights and duties provided in it or arising out of it under governing laws of which we are ignorant, presumably those of Taiwan or Japan. As we do not know those laws nor how they would characterize the transaction, it is appropriate, for the preliminary purpose of jurisdictional analysis here and without any particulars in the record, to characterize the transaction in the terms of Western law.²²

Although the case has its roots in a casualty in California, claimed to be due to a defective tire tube, Asahi did not sell the tube, either at retail or wholesale, ship it here or even manufacture it. This is solely a claim for indemnity by Cheng Shin, contending that the failure of the tube it manufactured was due to a failure of the component valve made by Asahi. The claim is based in part explicitly upon the contractual ground of breach of warranty. It is, therefore, a claim that Asahi failed to furnish the valve it undertook and was expected to furnish. Additional grounds are asserted which must also take account of any relevant contractual relationships.²³

²² See Cal. Evid. Code § 311(a) and *Perkins v. Benguet Consolidated Mining Co.*, 55 Cal. App. 2d 720, 768 (1942).

²³ If it were supposed that the matter were to be governed in part by California tort law, then it should be noted that even claims for indemnity under California tort law are presumably subject to limitations arising from the contracts of the parties, as indemnity in California arises either from contract or from "equitable considerations" and is dependent upon a special relationship of the parties. *City and County of San Francisco v. Ho Sing*, 51 Cal. 2d 127, 130 (1958).

B. The foreign transaction and relationship with which this case is concerned do not pass the tests applied by the Court in analogous contract cases

In its four most recent decisions on personal jurisdiction involving contracts and resultant relationships, the Court has focused especially on three tests:

- (1) Substantiality of the contract's connection with the forum State;²⁴
- (2) Purposeful activity within the State invoking the benefits and protections of its laws;²⁵
- (3) Anticipation of being haled into the State's courts;²⁶

Where jurisdiction has been upheld, one party to the contract was domiciled in the forum State, as is certainly not the situation here. *McGee v. International Life Insurance Co.*, *supra*, *Burger King Corp. v. Rudzewicz*, *supra*. In *Hanson v. Denckla*, *supra*, at 253, the Court rejected the argument that Florida's legal view of the execution of a power of appointment as republishing a Delaware trust agreement in Florida could establish a sufficient connection with the contract. And in *Shaffer*, the Court did not regard as sufficient the contractual relationships of stockholder, director and officer with a corporation domiciled in the forum State. In this case there is no connection at all between the contract and California.

As for purposeful activity, the record surely shows less of it by Asahi in the forum State than by the directors and shareholders of the Delaware corporation in *Shaffer*, and less even than by the father who sent his daughter to live most of the year in the forum

²⁴ *McGee v. International Life Ins. Co.*, *supra*, at 223; *Hanson v. Denckla*, *supra*, at 252, 253; *Burger King Corp. v. Rudzewicz*, *supra*, at 545; cf. *Shaffer v. Heitner*, *supra*, at 213.

²⁵ *Hanson v. Denckla*, *supra*, at 253; *Shaffer v. Heitner*, *supra*, at 216; *Burger King Corp. v. Rudzewicz*, *supra*, at 547; cf. *McGee v. International Life Ins. Co.*, *supra*, at 223.

²⁶ *Shaffer v. Heitner*, *supra*, at 216; *Burger King Corp. v. Rudzewicz*, *supra*, at 547; cf. *McGee v. International Life Ins. Co.*, *supra*, at 223.

State in *Kulko*. And Asahi displayed no more such purposeful activity than the automobile dealer in *World-Wide Volkswagen*, where the Court acknowledged it was foreseeable that the car would roll over the nation's highway system onto the roads of Oklahoma but held that fact not adequate to justify the exercise of jurisdiction.

If the shareholders and directors, the father, and the automobile dealer should not have anticipated being haled into the courts of the forum States in the cases just cited, there is nothing in the record of this case which plausibly suggests that Asahi should have reasonably anticipated being haled into a California court.

C. The facts here also fail the additional tests which would apply to a product liability tort claim

In *World-Wide Volkswagen*, the Court recognized that not everyone who manufactures or sells a product which injures someone in a forum State has the necessary contacts, ties or relations with that State to be sued there on account of the injury. The Court said, however, in a dictum much discussed since, that the forum State does not exceed its powers "if it asserts personal jurisdiction over a corporation that delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum State" [at 297-98]. This statement appears as part of a paragraph explaining conduct by which the defendant "purposefully avails itself of the privilege of conducting activities within the forum State."²⁷

²⁷"When a corporation 'purposefully avails itself of the privilege of conducting activities within the forum State,' *Hanson v. Denckla*, 357 U.S. at 253, it has clear notice that it is subject to suit there, and can act to alleviate the risk of burdensome litigation by procuring insurance, passing the expected costs on to customers, or, if the risks are too great, severing its connection with the State. Hence if the sale of a product of a manufacturer or distributor such as Audi or Volkswagen is not simply an isolated occurrence, but arises from the efforts of the manufacturer or distributor to serve, directly or indirectly, the market for its product in other States, it is not unreasonable to subject it to suit in one of those States if its allegedly defective merchandise has there been the source of injury to its owner or to others. The forum State does not exceed its

Although the California Supreme Court and other courts as well have applied the dictum mechanically to find jurisdiction wherever a sale of goods into any commercial pattern ultimately leads to their resale in the forum State, the reasonable understanding of the matter is that delivery into the "stream of commerce" cannot be interpreted so broadly as to omit the element of purposefully availing oneself of the privilege of conducting activities in the forum State. Of course, the manufacturer who directly sells its product in the forum State is engaging in a purposeful activity there. The justification of the "stream of commerce" gloss is a defendant's practice of being active indirectly. This appears earlier in the same paragraph where the Court expresses what must have been the same idea as the "stream of commerce" theory in other words by saying that the assertion of jurisdiction is not unreasonable when the sale in the forum State arises from "the efforts of the [defendant] manufacturer or distributor to serve, directly or indirectly, the market for its product" there [at 297].

At the end of the same paragraph (quoted in note 27, *supra*), the court cited for comparison *Gray v. American Radiator & Standard Sanitary Corp.*, 22 Ill.2d 432, 176 N.E.2d 761 (1961), a case concerned with the manufacturer of a component part. This arouses speculation as to whether the Court meant to affirm that decision, as some lower courts including the Supreme Court of California have thought, or just to acknowledge the case as the leading source of the "stream of commerce" theory.²⁸ Promptly afterward, in *Eschmann Bros. & Walsh, Ltd. v. Mueller & Co.*,

powers under the Due Process Clause if it asserts personal jurisdiction over a corporation that delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum State. Cf. *Gray v. American Radiator & Standard Sanitary Corp.*, 22 Ill.2d 432, 176 N.E.2d 761 (1961)." 444 U.S. at 297-98.

²⁸*Gray* was taken in *Oswalt v. Scripto, Inc.*, 616 F.2d 191, 201-02 (5th Cir. 1980) to have been fully approved by this Court, and that conclusion was evidently rejected in *Humble v. Toyota Motor Co.*, 727 F.2d 709 (8th Cir. 1984). See also the speculative questions on the relationship of *Gray* and *World-Wide Volkswagen* in Cramton, Currie and Kay, *Conflict of Laws*, 560-61 (1981).

444 U.S. 1063 (1980), a product liability case against the foreign manufacturer of a component,²⁹ the Court vacated the judgment and remanded the case to the Colorado Court of Appeals for reconsideration in light of *World-Wide Volkswagen Corp.* We respectfully suggest that the Court had at that point not cited *Gray* for the purpose of embracing any more than the concept which *Gray* had expressed.

The valid reason for the "stream of commerce" doctrine then is to reach those who purposefully direct their commerce at the forum State, but would evade its jurisdiction by using an indirect channel, as through a chosen distributorship. The doctrine is premised on the belief that manufacturers should not be able to insulate themselves from jurisdiction by acting through intermediaries instead of dealing directly with the forum State.³⁰ The doctrine thus permits States to bring before their courts non-residents who reasonably do anticipate being haled into court there and also those who realistically should anticipate being haled into court there.

If, as we submit, the "stream of commerce" doctrine expresses a special case of purposefully conducting activities in the forum State, then it is an abuse of that doctrine to apply it here. There is nothing to show that Asahi directs anything at the State of California or has any more purpose than to supply the Taiwanese manufacturer with such parts as it specifies to be incorporated

²⁹The defendant was the English manufacturer of a component alleged to have been defective and to have been sold to a manufacturer of medical instruments in Chicago, incorporated into an instrument and foreseeably used in the United States to the injury of the patient in Colorado [see Petition in No. 79-517 in this Court, a copy of which has been provided to counsel for Cheng Shin]. The case is not reported in Colorado, either before or after the decision of this Court. It was No. 78-973 in the Colorado Court of Appeals, where the record shows that after remand the Colorado court reversed the prior decision and affirmed the quashing of service by an order, copies of which have been provided to the Clerk and to counsel for Cheng Shin.

³⁰See *DeJames v. Magnificence Carriers, Inc.*, 654 F.2d 280, 285 (3d Cir.), cert. denied, 454 U.S. 1085 (1981).

into its products, which it then directs as it wishes, with no urging or motivation from the parts supplier and no accountability to it.

The doctrine has no application to those who do not themselves market in the forum State and do not have an indirect marketing scheme to do so. Nor does it apply to those who do not deliberately design their parts with the anticipation that they will be used in the United States and do not attempt to comply with United States rules and regulations in so designing their parts, but leave those considerations to the manufacturer of the product to be marketed here. The "stream of commerce" theory of jurisdiction still requires some actual, voluntary and deliberate conduct by the nonresident defendant with the forum State.³¹

Asahi has made no attempt to exploit the California marketplace. Asahi has made no attempt to insulate itself from direct dealings with the forum State by using intermediaries. Asahi has no marketing scheme to serve California. Asahi does not deliber-

³¹Several courts which have explicitly employed the stream-of-commerce theory of jurisdiction have recognized its limited applicability. In *Volkswagenwerk A.G. v. Klippan*, 611 P.2d 498 (Alaska), cert. denied, 449 U.S. 974 (1980), a German seatbelt manufacturer was held subject to Alaska jurisdiction for alleged defects in a seatbelt installed on a German Volkswagen. The seatbelt manufacturer represented by a label sewn on a seatbelt that the belt was "approved for sale in all states" and took steps to ensure that its seatbelts complied with standards established by the American Society of Automotive Engineers. Thus, the German seatbelt manufacturer deliberately designed its product in anticipation of its being widely used and marketed in American jurisdictions. Similarly, in *Rockwell International Corp. v. Costruzioni Aeronautiche Giovanni Agusta*, 553 F. Supp. 328 (E.D. Pa. 1982), a French component parts manufacturer was held subject to Pennsylvania jurisdiction where the component parts manufacturer specially designed its component parts (bearings) for use in a helicopter targeted for executive transport in the United States and Europe, knowing the contemplated use of the product; advertised in a publication widely circulated in Canada, Europe and the United States; and had an exclusive agreement with a California corporation to promote and sell its product. Therefore, actual contacts with the United States existed and there was a finding by the court that the nonresident defendant was directly attempting to exploit the market in which the injury occurred.

ately design its product so as to comply with local rules and regulations. The Court has observed that it is precisely because of engaging in economic activity in the forum State that subjecting the defendant to litigation there will not be unfairly burdensome. *McGee v. International Life Insurance Co.*, *supra*, at 223; *Burger King Corp. v. Rudzewicz*, *supra*, at 541. The functions of a parts supplier in the position of Asahi do not constitute economic activity in California.

The California Supreme Court, employing the precise analysis rejected by this Court in *World-Wide Volkswagen*, and substituting awareness for foreseeability, determined "that the minimum contacts requirement is satisfied where, as here, the manufacturer is aware that a substantial number of its products will be sold in the forum State" [Pet. App. C-15]. This Court, in *World-Wide Volkswagen Corp. v. Woodson*, *supra*, at 295, declared that foreseeability alone was not enough and clearly held that other and substantial contacts were necessary.

But the foreseeability that is critical to due process analysis is not the mere likelihood that a product will find its way into the forum State. Rather, it is that the defendant's conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there. 444 U.S. at 297.

Thus, the relevant foreseeability must be incident to other circumstances which would lead the defendant to expect that its conduct would subject it to the jurisdiction.³² The Court elaborated the point by saying that the Due Process Clause

³² Ripple and Murphy, *World-Wide Volkswagen Corp. v. Woodson*: Reflections on the Road Ahead, 56 Notre Dame Lawyer 65, 68 (1980), express it this way: "Instead, the Court stated that foreseeability in the jurisdictional context concerns itself with whether a 'defendant's conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there.' [Footnote omitted.] These connections arise when a defendant 'purposefully avail[s]' himself of the privilege of conducting activities in the forum State. [Footnote omitted.]"

gives a degree of predictability to the legal system that allows potential defendants to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit.

When a corporation "purposefully avails itself of the privilege of conducting activities within the forum State," . . . it has clear notice that it is subject to suit there, and can act to alleviate the risk of burdensome litigation by procuring insurance, passing the expected costs on to customers, or, if the risks are too great, severing its connection with the State. 444 U.S. at 297.

Clearly then foreseeability, a judicial construct rather than an action or contact, is not itself activity within the State or the purposeful availment of the privilege of conducting such activity. Here the sole supposed "contact" was foreseeability, assuming, what is by no means clear, that the awareness of Asahi amounts to the same thing as foreseeability. It is no contact at all and surely is not what was contemplated in *World-Wide Volkswagen* or *International Shoe* as essential to the exercise of jurisdiction.

In *World-Wide Volkswagen*, the Court reiterated the statement in *Hanson* that "unilateral activity of those who claim some relationship with a nonresident defendant cannot satisfy the requirement of contact with the forum State." [at 298]. See also *Burger King Corp. v. Rudzewicz*, *supra*, at 542. That statement in *Hanson* is immediately amplified by the much quoted language that "it is essential in each case that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws." 357 U.S. at 253. Asahi's component part was only located in California and sold there because Cheng Shin, through its unilateral activity, chose to market its tubes in California and purposefully availed itself of the privilege of conducting activities there. No act of Asahi occurred in California or directed its component there.³³

³³ Even if the California plaintiffs sued Asahi for their personal injuries there would still be no basis for the exercise of jurisdiction over Asahi. Asahi's contacts with California are the same irrespective of

D. Even if there were sufficient contacts with California the additional criterion of fair play and substantial justice would not be met

In *World-Wide Volkswagen Corp. v. Woodson*, *supra*, at 292, the Court summed up the recognized tests of reasonableness to meet the requirement of fair play and substantial justice where minimum contacts have been found to exist. The relevant tests applicable here are the burden on the defendant, the plaintiff's interest in obtaining convenient and effective relief, and California's interest in adjudicating the dispute.

A Far Eastern defendant is obviously burdened by litigation in California on Far Eastern contracts and transactions involving commitments and understandings in the light of Far Eastern law and custom. We recognize that the defendant's burden may be weighed against the plaintiff's interest. But there is nothing in the record here to show that it is important for Cheng Shin to obtain relief in California rather than in the Far East. Indeed, the California Supreme Court did not rely upon Cheng Shin's interest, but rather balanced the burden of Asahi only against what it saw as the interest of the State of California [Pet. App. C-15-17].

The California Supreme Court first discovered "a strong interest in protecting its consumers by ensuring that foreign manufacturers comply with the state's safety standards" [Pet. App. C-16]. By this the court clearly meant the application of California tort law to a case involving transactions between a Taiwanese and a Japanese in their own countries. But California's interest in protecting its consumers is satisfied by the ability of its laws to reach those who manufacture, import and sell the finished products in California, without reaching down through the whole chain of suppliers of components, components of components, *et cetera*. Hence no substantial California interest is protected by its exercise of jurisdiction over Asahi.

The court also found supplemental interests of California in "the orderly administration of its laws . . . where, as here, 'most of

which party seeks to assert jurisdiction. Thus Asahi's relationship to the forum would be as attenuated as when Cheng Shin sued.

the evidence testimonial or otherwise is within its borders . . .'" and in the fact that Cheng Shin had named "numerous defendants" and "a possibility of inconsistent verdicts if Asahi cannot be sued in California" [Pet. App. C-16]. Here, again, California assumes the application of its own law in undertaking a burden of orderly administration. Its concern with inconsistent verdicts further begs the question by assuming California's interest in the verdict as to Asahi. And its assumption about the location of the evidence is unsupported by the record.

The application of forum State law to foreign defendants is limited by considerations of due process. *Home Insurance Co. v. Dick*, 281 U.S. 397 (1930); *Allstate Insurance Co. v. Hague*, 449 U.S. 302 (1981). If the question were ever properly reached in this case, the application of California law would not be found to comport with due process. *Cf. Home Insurance Co. v. Dick*, *supra*; *Phillips Petroleum Co. v. Shutts*, 472 U.S. ___, ___, 86 L. Ed. 2d 628, 646-49 (1985). In the absence of any showing to the contrary, the nature, obligation and interpretation of a contract are governed by the law of the place where it was made³⁴ and the Court has emphatically rejected invitations to legal jingoism in international commerce.³⁵

But it was error of the California Supreme Court to reach choice of law at this point. This Court has repeatedly held that a court cannot base a finding of state interest upon a choice of forum State law, even in cases where the applicability of forum State law appeared likely. *Hanson v. Denckla*, *supra*, at 254; *Shaffer v. Heitner*, *supra*, at 216; *Kulko v. Superior Court*, *supra*, at 98; *Keeton v. Hustler Magazine, Inc.*, *supra*, at 778. Accordingly the main argument made for California's interest also fails.

³⁴*Liverpool & Great Western Steam Co. v. The Phenix Insurance Co.*, 129 U.S. 397 (1889); *Hall v. Cordell*, 142 U.S. 116 (1891); *Gaston Williams & Wigmore of Canada, Ltd. v. Warner*, 260 U.S. 201 (1922); *Mutual Life Insurance Co. of New York v. Liebing*, 259 U.S. 209 (1922).

³⁵*See The Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1, 9 (1972); *Scherk v. Alberto-Culver Co.*, 417 U.S. 506, 517 n.11 (1974).

III.

**CALIFORNIA'S ASSERTION OF JURISDICTION OVER
ASAHI IS INCONSISTENT WITH GOVERNING CON-
STITUTIONAL PRINCIPLES AND INTERNATIONAL
STANDARDS**

As we have shown above, this case does not fairly meet any of the tests the Court has laid down for the identification of minimum contacts. Viewing the case against the broad expressions of governing principles reviewed in Part I.B., *supra*, produces no different impression.

The single, supposed incident of "contact, tie or relationship" which is thought to provide a handhold for the California court here is the awareness by Asahi that some of its valves might be incorporated in products sent to California and sold there. In *Helicopteros*, contacts substantially more numerous and closer did not suffice to sustain jurisdiction. That case was analyzed as presenting a question of general, rather than specific, jurisdiction but it is remarkable how closely some of the contacts with the forum could be said to be related to the claim.³⁶ In *Shaffer*, which did deal with specific jurisdiction, the insufficient contacts, ties and relationships were distinctly more meaningful than in this case and more likely to indicate to defendants their amenability to jurisdiction in the State, in whose corporate creature they owned stock and had accepted offices and directorships. Nothing in the record, in past decisions of the Court, or in relevant credible literature indicates that a Japanese corporation, in the circumstances here, should reasonably suppose that it was establishing such contacts, ties or relationships with California as to be subjected to jurisdiction there.

Fair-minded persons will not regard the assertion of jurisdiction here as "fair play and substantial justice", on the basis of the obvious burden upon a Far Eastern party to defend in California in connection with Far Eastern transactions, the presumable opportunity of the Far Eastern plaintiff to sue in its own hemisphere and the inappropriateness of applying California law (or of

³⁶See *Helicopteros Nacionales de Colombia, S.A. v. Hall*, *supra*, dissenting opinion of Justice Brennan at 425-26.

choosing a California court to apply Japanese or Taiwanese law) to the transactions and resulting rights of the parties.³⁷

Asahi is shown to have no contacts or ties giving it any meaningful relations to the forum. The litigation, depending as it does upon a completely foreign transaction, has no meaningful relationship to the forum beyond its present existence there. Although this case is circumstantially different from *Rush v. Savchuk*, 444 U.S. 320 (1980), the conclusion reached there provides a valid analogy here:

The only affiliating circumstance offered to show a relationship among Rush [Asahi], Minnesota [California], and this lawsuit is that Rush's [Asahi's] insurance company [purchaser] does business in the State. 444 U.S. at 328.

In these circumstances the "relationship among the defendant, the forum and the litigation"³⁸ is too attenuated for serious regard.

Finally, the inadequacy of contacts is accentuated when we take into account the likelihood of transgressing acceptable international standards and the futility of encouraging illusory claims of power.

CONCLUSION

For the foregoing reasons we respectfully submit that the decision of the Supreme Court of California should be reversed.

Respectfully submitted,

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³⁷See *World-Wide Volkswagen Corp. v. Woodson*, *supra*, at 292.

³⁸*Shaffer v. Heitner*, *supra*, at 204.

No. 85-693

Supreme Court, U.S.

FILED

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In The
Supreme Court of the United States
October Term 1985

— o —
ASAHI METAL INDUSTRY CO., LTD.,

Petitioner,

vs.

SUPERIOR COURT OF CALIFORNIA
IN AND FOR THE COUNTY OF SOLANO
(CHENG SHIN RUBBER INDUSTRIAL CO., LTD.,
REAL PARTY IN INTEREST),

Respondent.

— o —
ON WRIT OF CERTIORARI TO THE SUPREME COURT
OF THE STATE OF CALIFORNIA

— o —
RESPONDENT'S BRIEF

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RESPONDENT'S BRIEF

SUBSIDIARIES AND AFFILIATES OF RESPONDENT

Cheng Shin Rubber Industrial Co., Ltd. is the parent company of Cheng Shin Tire USA, Inc., a California corporation, involved in marketing of the products of the parent company in the United States. Respondent is not

aware of the affiliates and subsidiaries of the petitioner if any.

STATEMENT OF THE CASE

This products liability action arises out of a motorcycle accident that occurred in Solano County, California, in 1978. One California resident was killed and another was severely injured when a sudden loss of air in the rear tire of the plaintiff's motorcycle caused him to lose control and fall in front of a truck and trailer rig. Plaintiff, alleging that the motorcycle tire, tube and sealant were defective, filed suit against, *inter alia*, Cheng Shin Rubber Industrial Company, Ltd. (Cheng Shin), the manufacturer of the tire tube, and Cheng Shin Tire USA, Inc., a California corporation (Cheng Shin USA). (Appendix to Petition for Writ of Certiorari ("Pet. App.") C-1.)

Cheng Shin is a Taiwanese corporation that manufactures tire tubes. Cheng Shin purchases tire tube valves from component part manufacturers and incorporates them into tire tubes which are marketed throughout the world. Cheng Shin distributes a substantial number of its tire tubes throughout the United States. Approximately 20 per cent of its sales in the United States are made in California. (Pet. App. C-1, 2.)

Asahi Metal Industries, Company Ltd. (Asahi) is a major Japanese manufacturer of tire tube valves. Asahi sold 1,350,000 valves to Cheng Shin between 1978 and 1982, and has done business with Cheng Shin for 10 years. (Pet. App. C-2.) All sales of tire valve assemblies to Cheng

Shin occurred in Taiwan. The valves were shipped from Asahi in Japan to Cheng Shin in Taiwan. (Pet. App. B-2.) Asahi had actual knowledge at the time of sale that Cheng Shin would market its tire tubes with Asahi's valve stems in the United States and California. (Pet. App. C-10, fn. 4.)

Cheng Shin is not Asahi's exclusive purchaser of tire tube valves. Other purchasers include Honda, Bridgestone, Kenda, Yokohama and I.R.C., all of whom market in California. In February and March of 1983, two samplings of tire tubes were made at two different California businesses. The February sampling found nearly 250 motorcycle tire tubes with valves manufactured by Asahi. The March sampling disclosed that, of 97 tire tubes inspected, 21 (or 22 per cent) had valves manufactured by Asahi. (Pet. App. C-2, fn. 1.)

Subsequent to plaintiff's filing of this suit, numerous cross complaints were filed, including one by Cheng Shin seeking indemnity against Asahi. Cheng Shin USA also filed a cross complaint which has not yet been served. Additionally, the retailer, Sterling May Company, filed a cross complaint and ultimately a new action which apparently has not been served yet, pending the outcome of this matter.

Cheng Shin's cross complaint was properly served on Asahi in Japan. Asahi then moved to quash service of the summons and complaint which was denied by the trial court. A Writ of Mandate was sought and obtained from the California Court of Appeals ordering the trial court to quash service of the summons and complaint. Cheng Shin

then filed a petition for hearing in the Supreme Court of California which was granted. The Supreme Court of California reversed the ruling of the Court of Appeals. This had the effect of reinstating the original ruling of the trial court denying the motion to quash service of the summons and complaint. In making its determination, the Supreme Court of California cited and followed the precedent established by this Court in *International Shoe Company v. Washington*, 326 U.S. 310 (1945), and its progeny. Specifically, the Court found that Asahi's conduct and activities were sufficient to satisfy minimum contacts criteria and that it was fair and reasonable to subject it to California jurisdiction. (Pet. App. C-17, 18.)

SUMMARY OF ARGUMENT

Jurisdiction over non-residents is determined by general principles imposed by Due Process considerations. These principles require that the defendant have "minimum contacts" with the forum, such that "traditional notions of fair play and substantial justice" are not offended. The defendant must "purposefully avail itself of the benefits and protections" of the laws of the forum. This may be satisfied by the defendant *indirectly* serving the forum marketplace by delivering its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum.

Satisfaction of Due Process criteria depends on whether various circumstances are present in the particular facts, focusing on the relationship between the defendant, the forum and the litigation.

In this case, Asahi's conduct satisfies minimum contact requirements, and jurisdiction over petitioner is proper. Asahi could reasonably anticipate being sued in California, since they had knowledge that Cheng Shin was incorporating Asahi's valve into its own product and selling the product to California. Twenty per cent of the Cheng Shin tire valves sold in the United States were destined for California. Over a five year period, Asahi sold 1.35 million valves to Cheng Shin. Further, Asahi sold valves to several other worldwide marketers such as Honda, Yokohama, Bridgestone and Kenda. Asahi knowingly benefitted economically from the systematic and continued sales of its component parts in California by these manufacturers. It knowingly benefitted from the direct marketing efforts of manufacturers utilizing its product, which is manufactured for the sole purpose of sale as a component part. It must be pointed out that as a producer of component parts, the very existence of its business depends on the efforts of others to directly deal with the marketplace. The fact that Asahi's contact with the market is indirect should not insulate it from jurisdiction in the forum it serves indirectly.

Petitioner argues that the California Supreme Court improperly found jurisdiction based on mere foreseeability by Asahi that its product might end up in California. Instead, the Court found that the stream of commerce theory *was* applicable because there was "awareness" by Asahi that it was indirectly serving the markets of California and the United States, rather than mere foreseeability. It is clear that Asahi had actual knowledge that it was benefitting from the sale of its product by Cheng Shin and others in California. Actual knowledge goes far beyond

"mere foreseeability" in that it constitutes a certainty, rather than a potential, a possibility or a likelihood. Therefore, the California Supreme Court was consistent with *World-Wide Volkswagen* in holding that the requisite standards under Due Process analysis were met and that jurisdiction over Asahi was proper.

Further, it is fair and reasonable for petitioner to be subjected to California jurisdiction. The California Supreme Court found that jurisdiction over petitioner was fair and reasonable because of its interest in protecting its consumers, its interest in the orderly administration in avoiding the possibility of multiple litigation and inconsistent verdicts. Such matters of state interest are valid when weighed with the comparative difficulty and inconvenience residents and domestic businesses would incur if the only available remedy lies in a foreign court.

Petitioner purposefully availed itself of the protection and benefits of California law by taking advantage of the California marketplace with actual knowledge of the destination of its products. By the very nature of its role as a component supplier, Asahi could only reap profits from the California market indirectly, and through the direct efforts of others. Indirect dealing with the forum with this knowledge does not permit petitioner to shield itself from jurisdiction.

Finally, the domestic manufacturer, already struggling to compete with foreign companies, will suffer by having to bear the financial burden involved with products liability litigation for defective component parts if the responsible foreign manufacturer cannot be reached. Extending jurisdiction to foreign manufacturers of component

parts will not significantly impact international trade and relations, because it is fair and reasonable to expect those whose products injure others to answer to those injured thereby.

ARGUMENT

I

DUE PROCESS REQUIREMENTS HAVE BEEN MET ALLOWING CALIFORNIA TO PROPERLY EXERCISE PERSONAL JURISDICTION OVER THE PETITIONER

A. The Governing Standards of In Personam Jurisdiction Have Been Established

Over 40 years ago this Court established a two-pronged test to determine whether personal jurisdiction may be properly exercised over a defendant. First, due process requires that the defendant have certain minimum contacts with the forum so as not to "offend 'traditional notions of fair play and substantial justice.'" (*International Shoe, supra*, at 316, quoting *Milliken v. Meyer*, 311 U.S. 457, 463 (1940).)

The minimum contacts standard is satisfied where the defendant has "purposefully availed itself of the privilege of conducting activities within the forum state, thus evoking the benefits and protections of its laws." (*Hanson v. Denckla*, 357 U.S. 235, 253 (1958)). This requirement is satisfied where the manufacturer directly or indirectly serves the forum marketplace by delivering its products into the stream of commerce with the expectation that they

will be purchased by consumers in the forum. (*World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297-298 (1980).)

Second, due process mandates that "the relationship between the defendant and the forum must be such that it is 'reasonable . . . to require the corporation to defend the particular suit which is brought there.'" (*World-Wide Volkswagen, supra*, at 292 citing *International Shoe, supra*, at 317.) It is essential that in all cases, "the 'quality and nature' of the defendant's activity is such that it is 'reasonable' and 'fair' to require him to conduct his defense in that state." (*Kulko v. Superior Court*, 436 U.S. 84, 92. (1978).) Thus, a limitation is imposed upon state-exercise of jurisdiction "in its role as a guarantor against inconvenient litigation. . . ." (*World-Wide Volkswagen, supra*, at 292.)

However, the due process limitation has been substantially relaxed over the years in light of the developments in modern transportation and communication which have greatly reduced the defendant's burden of defending in a state where it engages in an economic activity (*McGee v. International Life Insurance Co.*, 355 U.S. 220, 223 (1957)). Moreover, these historical developments "have only accelerated in the generation since [*McGee*] was decided." (*World-Wide Volkswagen, supra*, at 293.)

Ultimately, the determination of whether due process standards have been satisfied must be decided on a case by case basis. (*Perkins v. Benguet Consolidated Mining Co.*, 342 U.S. 437, 445 (1952).) The standards for making such a determination are:

"... not susceptible of mechanical application; rather, the facts of each case must be weighed to determine whether the requisite 'affiliating circumstances' are present." (*Kulko, supra*, at 92.)

The focus, therefore, is on "the relationship among the defendant, the forum, and litigation . . . [which becomes] the central concern of the inquiry to personal jurisdiction" (*Shaffer v. Heitner*, 433 U.S. 186, 204 (1977)). As a result, an out-of-state defendant is subject to the jurisdiction of the forum state when he "purposefully directed" his activities at residents of the forum, (*Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770 (1984)) through indirect efforts of the manufacturer to deliver his products into the stream of commerce, (*World-Wide Volkswagen, supra*, at 297-298), and the litigation results from the alleged injuries that "arise out of or relate to" those activities, *Helicopteros Nacionales de Columbia, S.A. v. Hall*, 466 U.S. 408 (1984), *Burger King Corp. v. Rudzewicz*, 471 U.S. —; 85 L.Ed.2d 528, 541; 105 S.Ct. 2174 (1985).

Finally, this Court has affirmed the application of these standards to products liability cases (*World-Wide Volkswagen, supra*, at 291). It is with these principles in mind that the determination of whether petitioner is subject to California jurisdiction can be made.

B. Petitioner Has Sufficient Minimum Contacts to Be Properly Subject to California Jurisdiction

The minimum contacts standards require that the defendant should reasonably anticipate being haled into court in that jurisdiction (*World-Wide Volkswagen, supra*, at 297). This may be satisfied where a corporation de-

livers its products into the stream of commerce (*Id.*, at 297-298). Even though petitioner had no direct contacts with California, its indirect activities were sufficient for it to be subject to California jurisdiction (*Id.*, at 297).

1. Petitioner Could Reasonably Anticipate Being Haled Into Court in California

In order to find the minimum contacts necessary to exercise personal jurisdiction over a defendant, the defendant's activities must be sufficient such that it should reasonably be able to anticipate being haled into court in the forum (*Id.*, at 297). This "reasonable anticipation" concept is a step beyond *mere* foreseeability, as this Court has explained in *World-Wide Volkswagen*:

"[T]he foreseeability that is critical to due process analysis is not the mere likelihood that a product will find its way into the forum State. Rather, it is that the defendant's conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there." (*World-Wide Volkswagen, supra*, at 297, citing *Kulko v. Superior Court, supra*, at 97-98, and *Shaffer v. Heitner, supra* at 216.)

Petitioner argues that the California Supreme Court rested its finding of minimum contacts on *mere* foreseeability,¹ by assuming that the Court used the term "awareness" to mean the same as "foreseeability"² when the Court stated:

¹ Petitioner's Brief, p. 22.

² "... assuming ... that the awareness of Asahi amounts to the same thing as foreseeability," Petitioner's Brief, p. 23.

"... the minimum contacts requirement is satisfied where, as here, the manufacturer is aware that a substantial number of products will be sold in the forum state." (*Asahi Metal Industry Company, Ltd. v. Superior Court*, 39 Cal.3d 35, 51 (1985).)³

It is respectfully submitted that the California Supreme Court's use of the word "awareness" was not unintentional. Quite to the contrary, the word "awareness" was used specifically in order to differentiate the situation here from the facts in *World-Wide Volkswagen*. "Awareness" is the equivalent of knowledge or actual notice of an act, whereas "foreseeability" merely indicates a potential or a likelihood that an event may occur. The California Supreme Court indicated that "mere foreseeability" was surpassed because petitioner's actual knowledge and activities regarding its products in the forum were sufficient such that it could, or should, reasonably anticipate being haled into court in California.

A corporation can reasonably anticipate being sued in the forum state when its activities and conduct are such that it "purposefully avails itself of the privileges of conducting activities within the forum state." (*World-Wide Volkswagen, supra*, at 295, citing *Hanson v. Denckla, supra*, at 253.)⁴ Thus, where the corporation has a reason-

³ See Pet. App. C-15.

⁴ In *World-Wide Volkswagen v. Woodson*, these factors were applied to an automobile retailer and its wholesale distributor whose businesses were limited to the states of New York, New Jersey and Connecticut. The manufacturer, Audi, did not seek review in this Court.

able expectation that its product will be purchased in the forum state, it is amenable to the forum state's jurisdiction. (*Id.*, at 298, citing *Gray v. American Radiator and Standard Sanitary Corp.*, 22 Ill.2d 432, 176 N.E.2d 761 (1961).)⁵ Applying the foreseeability concept as accepted by this Court to the facts of this case, it is clear that petitioner should have reasonably anticipated being haled into court in California.

Here, petitioner is a manufacturer of component parts. Consequently, it initiates the chain of commerce ending with the sale of its component product to the consumer. Petitioner is dependent on the worldwide marketplace for the sale and use of its product. (See, *Rockwell International Corp. v. Costruzioni Aeronautiche Giovanni Agusta*, 553 F.Supp. 328, 332 (E.D. PA 1982), quoting *Developments—Jurisdiction*, 73 Harv.L.Rev. 909, 929 (1960).) Thus, a distinction is to be made between retailers, such as Seaway in the *World-Wide Volkswagen* case, who conduct their businesses in limited markets, and the manufacturer, who knowingly derives economic benefit from a much broader market.⁶ This is certainly true where the manufacturer has actual knowledge that its products are sold in the forum.

⁵ Accord, *Nelson v. Park Ind., Inc.*, 717 F.2d 1120 (7th Cir. 1983); *Hedrick v. Daiko Shoji Co., Ltd.*, 715 F.2d 1355 (9th Cir. 1983); *United States v. Toyota*, 561 F.Supp. 354 (C.D. CA 1983); *Rockwell Int'l Corp. v. Costruzioni*, 533 F.Supp. 328 (E.D. PA 1982); *Tedford v. Grumman American Aviation Corp.*, 488 F.Supp. 144 (N.D. MS 1980).

⁶ See, Section I.B.2., herein, post; *Nelson v. Park Ind., Inc.*, supra; *Oswalt v. Scripto, Inc.*, 616 F.2d 191, 200 (5th Cir. 1980); *Novinger v. E.I. DuPont de Nemours & Co., Inc.*, 89 F.R.D. 588, 593 (1981).

Furthermore, as a producer of component parts, the very existence of Asahi's business depends on the efforts of others to directly deal with the marketplace. The fact that its contact with the market is indirect should not insulate it from jurisdiction in the forum it serves.

In the five year period from 1978 to 1982, Asahi sold a total of 1.35 million tire tube valves to Cheng Shin. It is uncontroverted that Asahi had *actual knowledge* that its valves were incorporated into Cheng Shin's product sold in the United States and California. Approximately 20 per cent of Cheng Shin's sales in the United States were made in California.⁷ Thus, the sale of petitioner's product in California was a known, continuing, repetitive event, not an isolated occurrence.⁸

It is undisputed that petitioner also sold its product to such worldwide marketers as Honda, Yokohama, Bridgestone and Kenda, who sell extensively in the United States and California marketplaces. A sampling and examination of motorcycle tire tubes at a California cycle supply

⁷ See, Declaration of Hwally Chen, incorporated in several of the various briefs in the courts below, and duplicated in Appendix A, herein, for the convenience of the Court. See also Petitioner's Brief, pp. 5-6, and *Asahi Metal Industry Company, Ltd. v. Superior Court*, supra. (Pet. App. C-2).

⁸ In this respect, *World-Wide Volkswagen v. Woodson*, supra, is distinguished from the facts here. The holding in *World-Wide* relies on the lack of any evidence indicating that the presence in Oklahoma of an automobile sold by the defendants therein was anything but an isolated occurrence. (See, pp. 289 and 295.) Unlike *World-Wide*, jurisdiction over petitioner is not based upon "one, isolated occurrence and whatever inferences can be drawn therefrom . . ." (p. 295). Rather, jurisdiction here is based upon petitioner's intentional efforts to serve the markets of the United States, including California, with its product.

shop included tubes manufactured by various companies (including Cheng Shin). It revealed the extent of Asahi's presence in the California marketplace. Two hundred forty-six Asahi valves were found incorporated into tubes manufactured by Kenda, not including unopened cases of tire tubes at the shop.⁹ A second sampling revealed that of 53 tire tubes manufactured by Cheng Shin, almost one-quarter incorporated valve assemblies manufactured by Asahi.¹⁰

Regardless of petitioner's argument that sales of valves to Cheng Shin accounted for a minimal percentage of its annual income,¹¹ the number of valves involved cannot be considered miniscule. It is known that Asahi sold 1,350,000 valves to Cheng Shin between 1978 and 1982. It is known that Asahi sold valves to other major tire tube manufacturers.¹² It is known that 267 Asahi valves were actually found in tubes still on the shelves in a small northern California sampling.¹³ If all or some of the Asahi valves in California possess defects, neither the number of

⁹ See, Declaration of Kenneth B. Shepard, dated February 22, 1983, incorporated in several of the various briefs in the courts below, and duplicated in Appendix B, herein, for the convenience of the Court.

¹⁰ See, Declaration of Kenneth B. Shepard, dated March 24, 1983, incorporated in several of the various briefs in the courts below, and duplicated in Appendix C, herein, for the convenience of the Court.

¹¹ Petitioner's Brief, p. 4.

¹² See, footnote 7, *ante*.

¹³ This is the total number of Asahi valves observed in the two samplings: 246 from the February 14, 1983, sampling (See Appendix B), and 21 from the March 23, 1983, sampling (See Appendix C).

valves nor the potential for injury are miniscule. In this case alone there was one death and one catastrophic injury. As a result, possible defects may impose significant economic burdens not only on consumers, but also on companies who are intermediaries between Asahi and the ultimate consumer.

Petitioner argues that its activity amounts to no more such purposeful activity with the forum than the automobile dealer in *World-Wide Volkswagen*.¹⁴ More specifically petitioner characterizes its relationship with the forum as nothing more than "an awareness by Asahi that some of its valves might be incorporated in products sent to California for sale."¹⁵ This position ignores the reality of the facts and modern international trade.

Asahi's component part did not come to California by "chance" or "fortuitous circumstances."¹⁶ Petitioner had *actual knowledge* that its product was incorporated into tire tubes and sold in California by various tube manufacturers. Rather than abating or limiting its sales to avoid exposure to suit in California, petitioner continued to profit by selling its product to such international marketers of motorcycle tire tubes as Cheng Shin, Honda, Yokohama, Bridgestone and Kenda. Asahi knowingly benefitted economically from the systematic and continued sales of its component part by these manufacturers.

Asahi provided a manufactured product to Cheng Shin, who incorporated it into a tube. Both products were

¹⁴ Petitioner's Brief, p. 18.

¹⁵ Petitioner's Brief, p. 26.

¹⁶ *World-Wide Volkswagen v. Woodson*, *supra*, at 295.

distributed as a unit. Asahi cannot be allowed to avoid responsibility for the quality of its product merely because Cheng Shin actually marketed the final product. To authorize such a shield would be to allow Asahi to benefit economically from a market without the burden of responsibility to the market for product defects. Such a shield effectively burdens domestic intermediaries where actual fault lies with the very entity so shielded.

This situation is distinguishable from circumstances where the component supplier provides only a primary ingredient, such as thread or cotton¹⁷, or a raw material.¹⁸

Ingredient can be utilized in a wide range of applications. Under these circumstances perhaps the ingredient supplier cannot reasonably anticipate every use of its product or its eventual destination.

Respondent admits that petitioner had no *direct* contacts with California. However, this Court has succinctly stated:

"... if the sale of a product of a manufacturer or distributor . . . is not simply an isolated occurrence, but arises from the efforts of the manufacturer or distributor to serve, directly or indirectly, the market for its product in other States, it is not unreasonable to subject it to suit in one of those States if its allegedly defective merchandise has there been the source of injury to its owner or others." (Emphasis added.)

(*World-Wide Volkswagen, supra*, at 297.)¹⁹

¹⁷ See, *Nelson v. Park Ind., Inc., supra*.

¹⁸ See, Brief for Cassiar Mining Corporation as Amicus Curiae in Support of the Petitioner, filed in this matter.

¹⁹ Accord, *Nelson, supra*, at 1126; *Oswalt, supra*, at 200; *Sells v. Int'l Harvester Co., Inc.*, 513 F.2d 762, 763 (5th Cir. 1975);

(Continued on following page)

It is undisputed that Asahi benefitted economically and materially from the marketing efforts of Cheng Shin and others in California. This benefit was admittedly indirect, yet was very real as evidenced by the number of Asahi valves found in California. Therefore, petitioner could reasonably anticipate being haled into court in California. It is only reasonable that Asahi should be amenable to suit in the very jurisdiction where its product is knowingly marketed, ultimately fails and causes injury.

2. Petitioner Purposefully Entered the Stream of Commerce

Petitioner argues that the so-called "Stream of Commerce Theory" of exercising jurisdiction is inapplicable because it did *not* attempt to insulate itself nor did it have an indirect marketing scheme designed to avoid California jurisdiction.²⁰ However, as this Court has stated:

"The forum State does not exceed its powers under the due process clause if it asserts personal jurisdiction over a corporation that delivers its products into

(Continued from previous page)

Coulter v. Sears, Roebuck and Co., 426 F.2d 1315, 1318 (5th Cir. 1970); *Duple Motor Bodies, Ltd. v. Hollingsworth*, 417 F.2d 231, 235 (9th Cir. 1969); *Rockwell, supra*, at 332-333; *Keckler v. Brookwood Country Club*, 248 F.Supp. 645, 649-650 (1965); *Gray v. American Radiator & Standard Sanitary Corp., supra*. Courts have also exercised jurisdiction without requiring the defendant to have knowledge of where his product is going. *Bean Dredging Corp. v. Dredge Tech. Corp.*, 744 F.2d 1081 (5th Cir. 1984); *Bach v. McDonnell Douglas, Inc.*, 468 F.Supp. 521, 526 (1979); *Novinger, supra*, at 593.

²⁰ Petitioner's Brief, pp. 20-22.

the stream of commerce with the expectation that they will be purchased by consumers in the forum State." (*World-Wide Volkswagen, supra*, at 297-298, citing *Gray v. American Radiator & Standard Sanitary Corp., supra*.)

In *Gray*, it was held that Illinois had jurisdiction over a foreign corporation which did no business in Illinois. The Court reasoned that because use of the corporation's product in Illinois was not isolated and that there existed a "reasonable inference" that there was substantial use and consumption of the defendant's product in Illinois, defendant benefitted from the laws of the state. (*Gray, supra*, at 766.) Furthermore, jurisdiction was proper because:

"With the increasing specialization of commercial activity and the growing interdependence of business enterprises, it is seldom that a manufacturer deals directly with consumers in other States. The fact that the benefit he derives from its laws is an indirect one, however, does not make it any less essential to the conduct of his business; and it is not unreasonable, where a cause of action arises from alleged defects in his product, to say that the use of such products in the ordinary course of commerce is sufficient contact with this state to justify a requirement that he defend here." (*Ibid.*)

Petitioner argues that this Court, in *World-Wide Volkswagen, supra*, intended the "stream of commerce" theory to apply only after the element of "purposefully availing oneself of the privilege of conducting activities in the forum State" is satisfied.²¹ Petitioner misinterprets

²¹ Petitioner's Brief, pp. 20-21.

the Court's intent. The "stream of commerce" language is a description of activity which satisfies the "purposefulness" requirement. (*World-Wide Volkswagen, supra*, at 297-298.) Petitioner cites *Eschmann Bros. & Walsh, Ltd. v. Mueller & Co.*, 444 U.S. 1063 (1980) in support of its position.²² However, the lower court's reconsideration upon remand did not necessarily reflect this Court's intended result, since the Court of Appeal did not sufficiently explain the reasoning behind affirming the trial court's decision in light of *World-Wide Volkswagen*. For this reason, the *Eschmann Bros.* case cannot be considered controlling under the facts here. Therefore, it is apparent that the stream of commerce theory is applicable to this case.

In applying the stream of commerce theory, this Court has distinguished a local retailer or distributor from a major manufacturer or distributor (*World-Wide Volkswagen, supra*, at 297-298.) Thus, when a manufacturer places its products in the stream of commerce of the United States, it is generally recognized, except for small local manufacturers who distribute products only in a small area, that the products will be marketed throughout the country. It is reasonable to assume that a manufacturer may be held liable in any state where its products are sold, even though it sells its products through independent distributors over which it exercises little or no control.

Applying the reasoning of *World-Wide Volkswagen* and *Gray* to the instant case, it is evident that petitioner

²² Petitioner's Brief, pp. 19-20.

is subject to the jurisdiction of California pursuant to the stream of commerce theory. As in *Gray*, petitioner's contacts with California cannot be characterized as isolated occurrences. Petitioner not only sold its tire valves to Cheng Shin, which it knew made extensive sales in California, petitioner also sold its product to several other worldwide marketers. Moreover, from these transactions it can be reasonably inferred that there was substantial use and consumption of petitioner's product in California, from which petitioner knowingly benefitted economically. As with the foreign corporation in *Gray*, petitioner has derived and enjoyed the benefits and protections of the laws of California insofar as petitioner has been directly affected by the transactions of its products in California. (See, *Gray*, *supra*, at 766, and *Hanson v. Denckla*, *supra*, at 253.) In addition, petitioner has enjoyed the benefits and protections of the laws of California simply by being allowed the accessibility to the California market for its valves.

Petitioner's argument relies on the assertion that since it has neither attempted to insulate itself nor used an indirect marketing scheme to avoid jurisdiction, it is not subject to jurisdiction under the stream of commerce theory.²³ Analysis of the facts betrays petitioner's theory. By selling its product to such worldwide marketers as Cheng Shin, Honda and Bridgestone, which it knows makes substantial sales in the United States and California, petitioner has, in effect, attempted to insulate itself from the jurisdiction of every state it indirectly serves, despite the

²³ Petitioner's Brief, pp. 20-22.

extensive use of its valves. The result could be that if any one of these valves is defective, an injured consumer would be precluded from seeking redress against the petitioner unless he or she is willing and able to bring suit in Japan. By maintaining this marketing scheme of selling to foreign marketers, petitioner has effectively precluded liability to the American consumer for any injuries caused by its defective product.²⁴

The practice of insulating oneself from a jurisdiction by way of dealing indirectly within that forum should not be permitted, especially where, as here, the very nature of Asahi's business as a component part manufacturer is to depend on others to directly deal with the market. This practice virtually shields Asahi from liability for injuries caused by defects in its products, though it is able to knowingly reap the economic benefits from the forum.

In short, through the utilization of this distribution system, petitioner has developed, or taken advantage of, a marketing scheme in a manner effectively insulating it from the jurisdiction of any of the United States, including California, despite the widespread use of its product throughout this country. The result is that petitioner has

²⁴In *Bach v. McDonnell Douglas, Inc.*, *supra*, jurisdiction was exercised over Martin-Baker, an English manufacturer of airplane ejector seats. In so ruling, the District Court observed that "(a)ssuming that Martin-Baker does not 'do business' in California, it appears that no United States District Court in that state would have venue. Perhaps it is possible for this matter to be litigated in England. However, the expense and inconvenience caused by trial of a case thousands of miles from the site of take-off, accident, and plaintiff's residence, offends the notion of fairness and makes the Court unwilling to rule out an Arizona forum simply because of the possible alternative of an English forum." (Emphasis added.) (*Id.*, at 527.)

placed its product into the stream of commerce with the expectation and knowledge that it would benefit economically from the marketing of its product by others. Asahi's efforts to indirectly serve and benefit from the California marketplace renders jurisdiction proper and appropriate in that state.

C. It Is Fair and Reasonable for California to Exercise Jurisdiction Over Petitioner

Petitioner asserts that it is not fair and reasonable for it to be subjected to California jurisdiction.²⁵ Its argument is premised on the allegation that the Supreme Court of California improperly found a California state interest in this action. Petitioner argues that the Court first assumed that California had personal jurisdiction over petitioner in order to determine choice of law. Then, petitioner argues the Court used choice of law to determine that exercise of jurisdiction was proper.

As the Supreme Court of California correctly points out, having determined that a defendant has sufficient minimum contacts with the forum state, the next determination is whether it is fair and reasonable to subject that defendant to the jurisdiction of the forum state.

"The court must balance the 'inconvenience to the defendant in having to defend itself in the forum state against both the interest of the public in suing locally and the inter-related interest of the state in assuming jurisdiction.' " (*Asahi Metal Industry Co., Ltd. v. Superior Court*, *supra*, at 52.)²⁶

²⁵ Petitioner's Brief, pp. 24-25.

²⁶ See, Pet. App. C-15.

The Court states three reasons for its determination that it is fair and reasonable to exercise jurisdiction over petitioner.

"First, California has a strong interest in protecting its consumers by ensuring that foreign manufacturers comply with the state's safety standards." (*Asahi*, *supra*, at 53.)²⁷

The Court hereby recognizes that if California cannot exercise personal jurisdiction over petitioner, California leaves its consumers without redress against foreign manufacturers whose defective products have caused injuries within California. Again, it is uncontroverted that petitioner's product has regularly entered California. Thus, many California citizens are subject to potential injury and death from defective valves manufactured by the petitioner. If California is unable to exercise jurisdiction over petitioner, an injured plaintiff's only remedy lies in the courts of Japan.²⁸ Similarly, California distributors and retailers who may be totally without fault are subject to liability unless they are able to seek relief overseas. Certainly, it is more burdensome for an injured plaintiff or a domestic distributor or retailer to bring suit in Japan than it is for petitioner to defend in California. This is certainly true when the accident occurs in the forum and all witnesses are located in the forum.

Moreover, if petitioner is not subject to California jurisdiction, then it logically follows that no state could constitutionally subject petitioner to its jurisdiction for

²⁷ See, Pet. App. C-16.

²⁸ See, Footnote 24, *ante*.

injuries caused by petitioner's defective product despite the continued use of petitioner's product throughout the United States. Thus, anyone injured by petitioner's product in the United States would be forced to litigate in Japan to seek their remedies.²⁹

The California Supreme Court's second and third reasons for finding it fair and reasonable to subject petitioner to California jurisdiction disclose the interest California has in the orderly administration of its laws and in avoiding the possibility of inconsistent verdicts. (*Asahi, supra*, at 53.)³⁰ Here there are multiple defendants. Although the original plaintiff is no longer involved, two other suits for indemnity arising out of these same circumstances still exist against petitioner. It should be specifically noted that respondent's subsidiary corporation, Cheng Shin USA, was a defendant in the base action and is a California corporation. Since these other suits are brought by California corporations, it is apparent that California still maintains a substantial interest in this suit despite plaintiff's absence.

Irrespective of the foregoing, petitioner attempts to characterize this matter as one arising in contract. The underlying tort case requires virtually identical litigation, including testimony by percipient and expert witnesses. Thus, the attempted distinction is without merit.

²⁹ See, Jay, "Minimum Contacts" As A Unified Theory of Personal Jurisdiction: A Reappraisal, 59 N.C.L. Rev. 429, 446-448 (1981); *Volvo of America Corp. v. Wells*, 551 S.W.2d 826, 828 (C.A. KY 1977).

³⁰ See, Pet. App. C-16.

Thus, California's interest in avoiding a multiplicity of suits and inconsistent verdicts is further indication that it is fair and reasonable to subject the petitioner to the jurisdiction of California, especially with regard to a matter which not only occurred in California, but which also involves numerous California parties.³¹

Finally, as the Supreme Court of California points out, petitioner has failed to present any evidence showing that it would be inconvenienced by litigating this matter in California.³² Certainly, as a practical matter, in these modern times when it is common for insurance companies to provide a defense by way of hiring attorneys who are located worldwide, and during which modern communication technology allows for virtually instantaneous contact regardless of distance, the inconvenience involved to an international manufacturing concern does not begin to compare with the inconvenience to the local plaintiff where the case has to be tried overseas.

Here, the California Supreme Court properly determined that it was fair and reasonable for California to exercise jurisdiction over petitioner.

D. California's Exercise of Jurisdiction Over Petitioner Is Not Based on the Unilateral Activity of Others

Petitioner argues that it is not subject to the jurisdiction of California because its product entered this coun-

³¹ See, *Sells, v. Int'l Harvester Co.*, *supra*, in which the Court exercised jurisdiction over a fan blade manufacturer based on exactly the same procedural facts as those involved in this suit.

³² See, Pet. App. C-17.

try through the unilateral activity of Cheng Shin,³³ In *Hanson v. Denckla*, *supra*, at 253, the Court states that

“... unilateral activity of those who claim some relationship with a nonresident defendant cannot satisfy the requirement of contact with the forum State.” (See also, *World-Wide Volkswagen*, *supra*, at 298 and *Burger King Corp. v. Rudzewicz*, *supra*, at 542.)

The Court goes on to state:

“The application of that rule will vary with the quality and nature of the defendant’s activity, but it is essential in each case that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws.” (*Hanson v. Denckla*, *supra*, at 353.)

The facts of this case indicate that petitioner, by the the quality and nature of its conduct and activities has purposefully availed itself of the protection and benefits of California law (See, Section I.B.1. and Section I.B.2., *ante*). That petitioner did not deal directly with the California market place does not camouflage the fact that petitioner, when it sold its product to Cheng Shin, knew that its product would be sold in the United States, including California.

Despite the fact that it only indirectly served the California market place, petitioner has nonetheless engaged in economic activity and knowingly benefitted from the marketing efforts of others in the United States and California. Thus, petitioner has purposefully availed itself of the protections and benefits of California law and is

³³ Petitioner’s Brief, p. 23.

therefore properly subject to California jurisdiction (*Hanson v. Denckla*, *supra*, at 253; *Gray v. Am. Radiator & Std. Sanitary Corp.*, *supra*, at 766.)³⁴

E. Conclusion

Based on the foregoing, it is manifestly clear that California’s exercise of jurisdiction over petitioner is consistent with the requirements of due process as set forth in *International Shoe Company v. Washington*, *supra*, and its progeny. Therefore, respondent respectfully submits that this Court should affirm the decision of the Supreme Court of California.

II

THE INTERNATIONAL CONSEQUENCES IN FINDING JURISDICTION OVER PETITIONER ARE NOT UNREASONABLE

A. A Competitive Edge Must Not Be Given to Foreign Manufacturers

American manufacturers must include in the cost of their goods the expenses associated with potential liability under products liability legislation and case law. Those domestic companies whose products are sold throughout the United States are subject to lawsuits in virtually every state. If foreign manufacturers of component parts are not subject to this same jurisdictional liability, a significant competitive advantage will be obtained over domestic manufacturers, in addition to the advantages that might already be conferred by less restrictive national laws gov-

³⁴ See also, discussion under Sections I.B.1. and 2., *ante*.

erning workplace safety and health, environmental obligations, wages and marketing limitations.

The likely deleterious effect of shielding foreign manufacturers of component parts from jurisdiction in products liability cases will further hinder the domestic manufacturer already struggling to compete with foreign competition. Domestic companies not actually at fault for defects in foreign-made components will have to bear the financial burden, either directly or by the ever-increasing cost of insurance, for derivative liability.

B. International Trade and Relations Will Not Suffer Significantly

Petitioner has indicated that assertion of international power over foreign corporations must be respectful of the conservative and reasonable views of national power which are current among others in our international community.³⁵ Respondent respectfully suggests that:

1. As a leader of the international economic and commercial community, those who trade with the United States expect international change in commercial respects to be instituted by the United States, as opposed to other nations;
2. For the purposes of this particular matter, the enormous amount of international trade between the United States and Japan, combined with significant effort by both countries to expand this trade further, suggests that an artificial "international boundary" shield as to liability for defective products is inappropriate and unreasonable. Japan is California's number one foreign trade partner, and California is

³⁵ Petitioner's Brief, pp. 14-15.

Japan's number one trade partner, after the United States itself;³⁶

3. Those actually at fault for the creation of a defective product should, in all fairness, answer to those injured thereby. Those injured include passively, vicariously or derivatively responsible domestic links in the stream of commerce.

CONCLUSION

There is a very real necessity in today's commercial world to hold accountable those foreign manufacturers who flood our markets with their goods. The fact that the foreign manufacturer benefits indirectly rather than directly is no justification for insulating those whose products are defective.

For all of the foregoing reasons, respondent respectfully submits that the decision of the Supreme Court of California should be affirmed.

Respectfully submitted,

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Attorney for Respondent

³⁶ See, Tatsuo Arima (Consul General of Japan in San Francisco), "On Trade With Japan," *The Business Journal, Serving Greater Sacramento*, Vol. 2, No. 49, p. 5, Week of March 10, 1986 (address: *The Business Journal*, 2030 J Street, Sacramento, California 95814, telephone: (916) 447-7661.) (Reproduced herein, Appendix D.)

APPENDIX A

DECLARATION OF HWALLY CHEN

I, HWALLY CHEN, declare as follows:

I am a manager in the employ of CHENG SHIN RUBBER INDUSTRIAL COMPANY., LTD., hereafter referred to as "Company". In my position with this Company my duties and responsibilities include the purchasing of component parts for items manufactured and assembled by Company. In this capacity I am eminently familiar with the marketplace and dealings in the industry. I have purchased tire tube valve assemblies from different suppliers including ASAHI METAL INDUSTRY COMPANY., LTD.

I am familiar with the ASAHI METAL INDUSTRY COMPANY, LTD., tire tube valve assembly. This product can be identified as ASAHI's by the logo on the product, which is a capital "A" enclosed by a circle.

I am aware that ASAHI METAL INDUSTRY COMPANY, LTD., is a major manufacturer of tire tube valve assemblies. These assemblies are supplied with the metal valve stem glued or attached to an oval rubber base. My company incorporates these assemblies into tubes.

I am aware and it is general knowledge throughout the industry that ASAHI is one of the big Japanese producers of these assemblies. Their customers include Bridgestone, Yokohama and IRC, all of which supply tubes to the major cycle manufacturers. These companies also sell replacement tubes.

In 1978, my Company purchased and incorporated 150,000 ASAHI valve stem assemblies into tire tubes.

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In 1979, my Company purchased and incorporated 500,000 ASAHI valve stem assemblies into tire tubes.

In 1980 my Company purchased and incorporated 500,000 ASAHI valve stem assemblies into tire tubes.

In 1981 and 1982 my Company purchased and incorporated 100,000 ASAHI valve stem assemblies into tire tubes.

In discussions with ASAHI regarding the purchase of valve stem assemblies the fact that my Company sells tubes throughout the world and specifically the United States has been discussed. I am informed and believe that ASAHI was fully aware that valve stem assemblies sold to my Company and to others would end up throughout the United States and in California.

Approximately twenty percent of the CHENG SHIN tire tubes sold in the United States are sent into California. The fact that the plaintiff in this action had an ASAHI valve stem assembly in his tire tube was not an isolated incident as I am informed and believe and thereupon state that there must be and have been numerous, perhaps thousands, such assemblies in use on the roads of California currently and over the years.

I declare under penalty of perjury that the foregoing is true and correct, except as to those matters stated upon information and belief which I believe to be true.

Executed this 4th day of March, 1983 in Los Angeles, California.

/s/ Hwally Chen

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APPENDIX B

DECLARATION OF KENNETH B. SHEPARD

I, KENNETH B. SHEPARD, declare as follows:

That I am an attorney licensed to practice law before all the courts of the State of California and I am a member of the law partnership of SHEPARD AND HAVEN, the attorneys of record for CHENG SHIN TIRE USA, INC., and CHEN [sic] SHIN RUBBER IND. CO. LTD., defendants and cross-complainants herein.

That on February 14, 1983, I went to HAHN CYCLE SUPPLY CO., INC. at 8601 23rd Avenue, Sacramento, California, where I met with Jimmy Sun, an employee of HAHN CYCLE SUPPLY CO., INC. While at that facility, I personally inspected numerous motorcycle tire tubes in packages bearing the names of various motorcycle tire tube manufacturers, including but not limited to "Kenda" and Cheng Shin. My specific purpose in so doing was to determine which tubes had a stamped, circled "A" in the rubberlike material at the base of the metal valve stem.

I observed the following sizes and numbers of Kenda brand motorcycle tire tubes with the circled letter "A" at or near the base of the valve stem:

96 tire tube size 250/275X16;
35 tire tube size 275/300X15;
27 tire tube size 350/400X19;
47 tire tube size 325/350X21;
41 tire tube size 325/350X16.

There were unopened cases of tire tubes at HAHN CYCLE SUPPLY CO., INC., which I did not examine.

I purchased two Kenda tire tubes from HAHN on February 14, 1983. One is described as a motorcycle tire

tube size 275/300X16 and the other is described as a motorcycle tire tube size 250/275X16. Both tubes have a circled "A" near the base of the valve stem. HAHN CYCLE SUPPLY CO., INC., invoice number 82330 is attached hereto as Exhibit "A" and incorporated herein by reference as proof of purchase. Both tire tubes are in the possession of SHEPARD AND HAVEN.

If sworn as a witness, I could competently testify to the above-stated facts which are within my own personal knowledge.

I declare under penalty of perjury that the foregoing is true and correct.

DATED February 22, 1983, at Sacramento, California.

/s/ Kenneth B. Shepard

APPENDIX C

DECLARATION OF KENNETH B. SHEPARD

I, KENNETH B. SHEPARD, declare as follows:

That I am an attorney licensed to practice law before all the courts of the State of California and I am a member of the law partnership of SHEPARD AND HAVEN, the attorneys of record for CHENG SHIN TIRE USA, INC., and CHENG SHIN RUBBER IND. CO. LTD. defendants and cross-complainants herein.

That on March 23, 1983, I went to STERLING MAY COMPANY, INC., 291 West Main Street, Woodland, California, where I met with Mike Dobrin of the law firm of Duncan, Ball, Evans and Ubalde and an employee of STERLING MAY COMPANY, INC., whose first name was Bob.

While at STERLING MAY COMPANY, INC., I observed ninety-seven (97) new motorcycle tire tubes which purportedly were manufactured in either Japan or Taiwan. There were not more than twenty (20) other tubes, some of which indicated they were manufactured in the United States, and the others were manufactured in Europe.

The ninety-seven (97) tire tubes inspected listed by brand name and/or importers names are as follows:

<u>Name</u>	<u>Number</u>
Yokohoma	2
Beck Arnley	1
Cheng Shin	53
Honda	3
Kenda	1

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Best (IRC)	17
HFR	12
Rocky	5
Nankang	3
	—
Total:	97

I personally observed the following sizes, numbers and brands of motorcycle tire tubes with the circled letter "A" at or near the base of the valve stem.

- 1—Kenda size 350/400-8
- 1—Best Nankang Rubber Tire Corp. Ltd. size 2.50/2.75X15
- 3—Nankang Rubber Tire Corp. Ltd. size 2.00/2.25-14
- 2—Cheng Shin 2.25/2.50-14
- 8—Cheng Shin 3.25/3.50-17
- 2—Cheng Shin 3.00/3.25-17
- 2—Rocky 2.75/3.00-16
- 1—Beck/Arnley 4.25/4.50-17
- 1—Honda 2.50/2.75-10

My specific purpose in conducting the inspection was to determine which tube [sic] had a stamped circled "A" in the rubber-like material at or near the base of the metal valve stem. Out of the ninety-seven (97) tire tubes inspected, twenty-one (21) tubes or twenty-two percent (22%) were so marked.

I purchased three (3) motorcycle tire tubes from STERLING MAY COMPANY on March 23, 1983, each of which has the stamped circled "A" at or near the base of the valve stem. One is a CHENG SHIN size 2.25/250-14; one is a Rocky, heavy duty motorcycle tube distributed by

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Rocky Cycle Company, Inc., whose address is Sunnyvale, California 94086, size 2.75/3.00-16. The third tire tube is a Honda, manufactured in Japan and is size 2.50/2.75-10. All three tire tubes are in the possession of SHEPARD AND HAVEN.

STERLING MAY COMPANY, INC.'s Invoice No. 2994 is attached hereto as Exhibit "A" to this declaration as proof of purchase.

If sworn as a witness I can competently testify to the above-stated facts which are within my own personal knowledge.

I declare under penalty of perjury that the foregoing is true and correct.

Dated March 24, 1983, at Sacramento, California.

/s/ Kenneth B. Shepard

Japan Week in Sacramento to provide an opening of the Pacific Rim's doors

As we near the 21st century, the relationship between Japan and the United States — two major Pacific Rim economies — becomes more important than ever. The course of relations between our two countries, responsible for over a third of world trade, has ramifications beyond our own borders.



ON TRADE WITH JAPAN

Tatsuo Arima

Since 1983, the government of Japan has sponsored Japan Week in chosen cities in the United States to highlight the mutual benefit of our bilateral ties and to strengthen our relations.

We have asked Sacramento to let us hold Japan Week here from March 10 through March 16 in recognition of the unusually strong historical, cultural and trade ties we share.

California's economic strength is vital to the U.S. economy and to Japan-U.S. relations. Gov. George Deukmejian recently called California "America's leadership state" in industries such as agriculture, aerospace, technology and others.

As California's No. 1 foreign trade partner, Japan plays an important role in this state. In 1984, 34.4 percent of California's foreign trade was carried out with the Japanese. Also, after the United States itself, California is Japan's number one trade partner.

California is building for a competitive economic future, and Japan is actively participating in this process. This state attracts over one-third of all Japanese-related investments in the United States. Considerably more than 500 Japan-affiliated firms create more than 60,000 jobs for Californians, with 26,000 jobs in the manufacturing sector alone. California also benefits from Japanese technological and management investments in vital industries.

Japan has brought its technological innovation and managerial know-how here. The Nummi automotive

plant in Fremont, a joint venture between GM and Toyota, is one example of this.

Given the magnitude of California-Japan relations, it is natural that all is not necessarily well. Disagreement and misunderstanding exist in the area of trade. The problems are complex, and the technicalities require commitment by both the United States and Japan.

Japan is working to sustain the free-trade system in the world. Its markets are already open, but we are also working hard to facilitate exports to Japan by holding import fairs in Japan to promote American products.

Despite Japan's efforts, misconceptions among Americans persist. They adversely affect our efforts to solve trade problems between Japan and the United States in a constructive manner.

For example, there is a common assumption that Japan has a closed market to American agricultural products. In fact, Japan buys \$6.8 billion worth of U.S. agricultural products, \$1.6 billion from California alone.

Realizing the importance of the United States, particularly California, Japan is making a determined effort to dispel these misconceptions and to strengthen our relations.

Throughout Japan Week, lectures, seminars, performances and demonstrations covering numerous aspects of Japan and its trade relations with this country will provide cultural, educational and business-related activities for everyone.

Speakers highlighting Japan Week will include government leaders, artists and such internationally renowned business leaders as Akio Morita, chairman of Sony.

Seminars will be held on gaining access to Japanese markets in electronics and telecommunications. The Japanese community in Sacramento also will host an evening of traditional Japanese performing arts hosted by KCRA TV-Channel 3's Sydnie Kohara.

Events will be held at the Sacramento Community Convention Center, California State University, Sacramento, and elsewhere. For a schedule, call the Japanese Consulate at (415) 921-8000. I urge everyone in Sacramento to take advantage of this opportunity to learn about Japan, California's number one overseas Pacific Rim partner.

Tatsuo Arima is Consul General of Japan in San Francisco.

(11)
No. 85-693

Supreme Court, U.S.
FILED

OCT 28 1986

JOSEPH F. SPANIOL, JR.
CLERK

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1986

ASAHI METAL INDUSTRY CO., LTD.
Petitioner,

VS.

SUPERIOR COURT OF CALIFORNIA
in and for the COUNTY OF SOLANO
(CHENG SHIN RUBBER INDUSTRIAL CO., LTD.
REAL PARTY IN INTEREST)
Respondent.

On Writ of Certiorari
To the Supreme Court of the
State of California

PETITIONER'S REPLY BRIEF

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On Writ of Certiorari
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State of California

PETITIONER'S REPLY BRIEF

INTRODUCTION

Petitioner Asahi submits this Reply Brief to respond to certain arguments of Respondent Cheng Shin and of Amicus California Manufacturers Association and to propose a formulation of the doctrine which should apply in a case such as this, in consonance with the Court's past decisions. We address especially the comparison of "foreseeability" with "awareness", the limitations on the Stream of Commerce Doctrine, the legitimate interest of the State in products liability law and the economic and political trade arguments raised especially by Amicus.

Respondent acknowledges that only specific jurisdiction is in question, conceding that the inquiry for the necessary contacts,

ties or relations focuses upon the "relationship among the defendant, the forum and the litigation".¹ Resp. Brief 9. In appraising the arguments of Respondent and Amicus California Manufacturers Association, it is well to keep this test constantly in mind. We deal only with a certain component part alleged to have been produced by Asahi,² to have been sold in a foreign transaction and to have proved defective as ultimately installed in a finished product abroad and then used in California. We are concerned with Asahi's expectation and activity in relation to that valve. Arguments and evidence based on activities and transactions not concerned with it are irrelevant.³

ARGUMENT

I

THE "AWARENESS" SHOWN BY THE RECORD HERE DOES NOT EXCEED THE MERE FORESEEABILITY WHICH HAS BEEN HELD INADEQUATE TO FOUND JURISDICTION

The test of *World-Wide Volkswagen v. Woodson* requires an "expectation that [the products] will be purchased by consumers in the forum State." 444 U.S. at 298. In its ordinary meaning an

¹ *Shaffer v. Heitner*, 433 U.S. 186, 204 (1977); *Rush v. Savchuk*, 444 U.S. 320, 327 (1980); *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 775 (1984); *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414 (1984).

² We do not refer to the valve as an actual Asahi valve because the provenance of the valve identified by Respondent is at least seriously in doubt. Since the filing of the Petition in this Court, it has been examined by an Asahi technician and found to be the product of some other manufacturer.

³ The alleged presence in California of other valves made by Asahi and reaching that State through other channels, with no evidence of knowledge by Asahi, (Resp. Brief App. 3-7) is far afield from the standard which both Petitioner and Respondent agree is to be applied, to say nothing of the qualifications of the lawyer who has claimed to be able to identify Asahi valves.

expectation is the act of anticipating, awaiting or looking forward to an event regarded as likely to happen.⁴ It is far more than the record shows in this case. Mere foreseeability is not enough. 444 U.S. at 295.

The California Supreme Court asserted that an "awareness" that some finished products would go to California, and therefore some components might do so as well, was sufficient. The Court spoke as though the record actually showed that Asahi knew its valves furnished to Cheng Shin would be used in California. It does not. All it shows positively is that Asahi was alleged to be aware at some time, from conversations, that Cheng Shin sold tubes throughout the United States. The extent of the relevant record is this:

In discussions with ASAHI regarding the purchase of valve stem assemblies the fact that my Company sells tubes throughout the world and specifically the United States has been discussed. I am informed and believe that ASAHI was fully aware that valve system assemblies sold to my Company and to others would end up throughout the United States and in California. [Declaration of Whally Chen, Resp. Brief App. A, p. 2; Pet. App. C-10 n.4]

Anything approaching specificity stops with the first sentence and even that fails to state when Asahi learned the information referred to so that it can be related to production of the valve, or even to the occurrence of the casualty. The second is at best a mere conclusory inference, an unwarranted exaggeration of the first, telling us nothing concrete about the knowledge of Asahi or when or how it was gained or the source of the information to the declarant and basis of his belief.

The California Supreme Court took liberty with this record when it said, "Asahi knew that some of the valve assemblies sold to Cheng Shin would be incorporated into tubes sold in California" (Pet. App. C-10); when it referred to "knowledge that they would be placed in tubes and sold in California" (Pet. App. C-

⁴ See "expect" and "expectation" in *Webster's Third New International Dictionary* (1981) and *Oxford English Dictionary* (1933).

11); and again, when it said, "Asahi knew that its valve assemblies would be incorporated into tubes sold by Cheng Shin in California" (Pet. App. C-17). If "awareness" is indeed more than foreseeability, that Court could not find such an "awareness" in the record here and it did not, and could not, find when such "awareness" existed.

The attempt to fix the constitutional boundaries of jurisdiction by the "awareness" doctrine of the Respondent and the California Supreme Court would carry us far into the realms of conjecture, procedural impracticality and consequent unfairness. The expectation referred to in *World-Wide Volkswagen v. Woodson*, 444 U.S. at 298, is surely an expectation which must exist when the defendant delivers the offending product into the stream of commerce. The predictability which the court thought due process provided, 444 U.S. at 297, would otherwise be impossible. Yet the California Supreme Court's holding, in effect, makes one subject to jurisdiction everywhere who has present knowledge of another's previously undisclosed placing of a finished product into the stream of commerce, without reference to when or how that knowledge was obtained.

It may perhaps be argued that the question of jurisdiction can be decided by taking evidence, to the full extent necessary, on the issue of whether the defendant's knowledge antedates the production and delivery of the offending product. This approach to jurisdiction has little to commend it, especially where components are involved, and the instant case illustrates the point very well. It would be necessary here to determine: (1) whether the valve was actually manufactured by Asahi at all; (2) when it was manufactured or in what transaction it was delivered to Cheng Shin; and (3) how those events related to the presently unknown dates of the "discussions", which Respondent relies on for Asahi's "awareness". All this carries the court and parties pretty far into a trial of the merits. If the issue of jurisdiction were postponed to the merits, however, jurisdiction might frequently evaporate at the end of trial, only after a considerable injustice to the defendant.

Respondent argues that the reference to "awareness" reflected a greater content of knowledge than mere foreseeability. In

asserting that awareness was knowledge, Respondent overlooks what it was knowledge of. The "awareness" which Respondent's declaration asserted in this case was knowledge that some part of Cheng Shin's vast production was sold and used in the United States. It was not knowledge that Asahi's fraction of the valves used by Cheng Shin, to say nothing of the valve in question, would ever go to any part of the United States, and it was certainly not knowledge that it would go to California in particular. In sharp contrast, the foreseeability that was argued and rejected in *World-Wide Volkswagen v. Woodson* was at least the foreseeability that the car in question would find its way to Oklahoma and cause an injury there. 444 U.S. at 295.

This Court, in *World-Wide Volkswagen v. Woodson*, said that "the mere likelihood that a product will find its way into the forum State" is not sufficient. 444 U.S. at 297. Not even such a "mere likelihood" existed here. On the record here Asahi's awareness was no more at best than an awareness of a possibility. Asahi was not an exclusive supplier to Cheng Shin. Pet. App. B-2-3; Resp. Brief 2. Cheng Shin has not disclosed its total production of Cheng Shin tubes with Asahi valves. A given segment might or might not go to the United States. Of those that did, some might or might not go to California, a State which is claimed to have accounted for only 20% of total U.S. sales. Pet. App. C-2. On these facts it was not likely, but was highly unlikely, that an Asahi valve would find its way into California.

Respondent seeks to distinguish the accident here from the "isolated occurrence" referred to in *World-Wide Volkswagen v. Woodson* by pointing to the presence of a number of Asahi valves in California in contrast to one Audi automobile in Oklahoma. The reference in *World-Wide Volkswagen v. Woodson* was not merely to the presence of an automobile in Oklahoma. There was no discussion of the number of automobiles sold by a large regional distributor which might have passed through Oklahoma. The "isolated occurrence" there was "the fortuitous circumstance that a single Audi automobile . . . happened to suffer an accident while passing through Oklahoma." 444 U.S. at 295. It was comparable to the occurrence in California of the failure of a tire which may have included an Asahi valve.

Pointing out the inadequacy of foreseeability as the test, this Court used several examples. 444 U.S. at 295-96. The Court recognized that "it was no doubt foreseeable" that the settlor of the trust in *Hanson v. Denckla*, 357 U.S. 235 (1958) would move to Florida and exercise a power of appointment there, and "it was surely 'foreseeable' " that the divorced wife in *Kulko v. California Superior Court*, 436 U.S. 84 (1978) would move to California and a minor daughter would live with her. The Court pointed out a very telling example in the form of a hypothetical transaction presented in *Erlanger Mills, Inc. v. Cohoes Fibre Mills, Inc.*, 239 F.2d 502, 507 (4th Cir. 1956), where the case was put that a California retailer who sold a tire for use on a car with Pennsylvania license plates should not be forced to defend in Pennsylvania a claim arising from a blowout there.

A contrast is presented by *Calder v. Jones*, 465 U.S. 783 (1984), where the Court dealt with the jurisdictional objections of a national magazine's editorial employees (a species of component makers) who contended they could not be haled into a California court for a sweeping defamation of a Californian, since they did not control the extensive circulation of the magazine there. In upholding jurisdiction, the Court distinguished *World-Wide Volkswagen v. Woodson* and *Rush v. Savchuk* on the basis that the defendants' intentional actions in *Calder v. Jones* (which were obviously injurious statements) were "expressly aimed at California" and that they knew that the brunt of the injury would be felt there where the subject lived and the magazine had its largest circulation, 465 U.S. at 789-90.

Of the federal appellate cases Respondent relies on (Resp. Brief 16, n.19), three, like the Gray case,⁵ involved only interstate transactions.⁶ As to such cases, the Court has a special function of

⁵ *Gray v. American Radiator & Standard Corp.*, 22 Ill. 2d 432, 176 N.E.2d 761 (1961).

⁶ *Coulter v. Sears, Roebuck & Co.*, 426 F.2d 1315 (5th Cir. 1970) (completed product); *Sells v. International Harvester Co.*, 513 F.2d 762 (5th Cir. 1975), *cert. denied*, 242 U.S. 943 (1976) (component); *Bean Dredging Corp. v. Dredge Technology Corp.*, 744 F.2d 1081 (5th Cir. 1984) (component).

ensuring the "orderly administration of the Laws"⁷ in the context of the federal system and under "principles of interstate federalism" discussed in *World-Wide Volkswagen v. Woodson*, 444 U.S. at 293-94, by distributing judicial business among "the interstate judicial system's" courts, *World-Wide Volkswagen v. Woodson*, 444 U.S. at 292, all of which lie within our constitutional system and authority. Two cases involved only manufacturers and exporters of finished products, exporting to the United States for widespread marketing through established distributors with whom they were privy.⁸ Of the two international cases involving components, both in the Ninth Circuit, one involved bus bodies specially designed and manufactured for use in the forum State.⁹ The other involved, not an original part, but a replacement or addition to a vessel, supplied ready for use; and we respectfully doubt the conclusion in that case that, because the piece was installed on a ship, a suit in any port where the ship was likely to call should have been anticipated.¹⁰

According to Respondent's argument, Cheng Shin controls the exercise of jurisdiction over its suppliers by what it may disclose to them in conversation about its foreign markets. This Court, however, referring to foreseeability, said that the Due Process Clause "gives a degree of predictability to the legal system that allows potential defendants to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit." 444 U.S. at 297. How can the component maker enjoy that predictability under the decision of the California Supreme Court and the casual control Respondent

⁷ *International Shoe Co. v. Washington*, 326 U.S. 310, 319 (1945).

⁸ *Oswalt v. Scripto, Inc.*, 616 F.2d 191 (5th Cir. 1980); *Nelson v. Park Industries, Inc.*, 717 F.2d 1120 (7th Cir. 1983), *cert. denied*, 465 U.S. 1024 (1984).

⁹ *Duple Motor Bodies, Ltd. v. Hollingsworth*, 417 F.2d 231 (9th Cir. 1969); *see also* dissenting opinion, 417 F.2d at 236.

¹⁰ *Hedrick v. Daiko Shoji Co.*, 715 F.2d 1355 (9th Cir. 1983). *See Sousa v. Ocean Sunflower Shipping Co.*, 608 F. Supp. 1309 (N.D. Cal. 1984), criticizing, and refusing to follow, the Court of Appeals, for misreading *World-Wide Volkswagen v. Woodson*, *supra*.

would confer on the final manufacturer? Presumably he can either resign himself to being sued in California in any instance or, at very best, assume liability to suit there whenever he fortuitously learns that his purchaser markets some of its products there. It seems hardly possible that all this is the predictability which the Court thought due process should provide or that it is consistent with the reasonable demands of international comity.

II

THE STREAM OF COMMERCE DOCTRINE SHOULD NOT BE INTERPRETED TO CIRCUMVENT THE BASIC REQUIREMENTS OF ANTICIPATION OF SUIT AND PURPOSEFUL ACTIVITY OR THE REASONABLE EXPECTATIONS OF INTERNATIONAL LAW AND COMITY

On the one hand, Respondent correctly acknowledges the requirement that the defendant should reasonably anticipate being haled into court in California and can anticipate that result when its activities and conduct are such that it "purposely avails itself of the privilege of conducting activities within the forum State". Resp. Brief 11. On the other hand, Respondent asserts that the reasonable anticipation of being haled into court in California may be satisfied "where a corporation delivers its products into the stream of commerce" (Resp. Brief 9-10), ignoring this Court's important qualification that the products must be delivered into the stream of commerce "with the expectation that they will be purchased by consumers in the forum State" 444 U.S. at 298. We submit that this Court arrived at the Stream of Commerce Doctrine from the two very important premises acknowledged by Respondent: (1) reasonable anticipation of being haled into court in the forum State; and (2) purposeful activities within that State. 444 U.S. at 297. Respondent appears however, to urge that the mere introduction of a product into a stream of commerce, which reaches a given State, is itself sufficient to satisfy the requirement of purposeful activity in that State. Resp. Brief 9-10, 18-19.

Respondent says that "Asahi's component part did not come to California by 'chance' ". Resp. Brief 15. If the tire in this case had an Asahi valve, it did indeed come to California by chance. The record shows that Asahi produced only a part of Cheng Shin's valves. Pet. App. B-2-3; Resp. Brief 2. It does not suggest that Asahi had any control over their destinations. The facts of record, as already described above (p. 4), show that, on a basis of numerical probability, the valve would have arrived in California not only by chance but against high odds.

Even if there were a valid statistical probability that an Asahi valve would have appeared in California as the result of being incorporated in a Cheng Shin tube, it would stand both international commerce and common sense on their heads to declare that one who does no more than supply another with a part that other needs to manufacture a usable product is depending on the other to deal for him in the other's foreign markets; that he has engaged in the "utilization of this distribution system"; and that he has "developed, or taken advantage of, a marketing scheme", to insulate himself from jurisdiction in California. Resp. Brief 21.¹¹

Respondent's argument comes to rest upon alleged "efforts to indirectly serve" the California market. Resp. Brief 22. Do the "efforts" sufficient to confer jurisdiction require no more than the production of a component and its sale to a maker of usable products known to be sold widely in the world? If so, then this Court's limitation of the Stream of Commerce Doctrine to those who make such "efforts" would be actually meaningless; nearly every foreign producer of components reaching our shores, beginning with ores and fibers, would be embraced by our jurisdiction.

¹¹ Against the record here it is extravagant also for Amicus California Manufacturers Association to assert Asahi's "presence" in California in the character of a valve manufactured, sold and delivered in the Far East and to attempt to augment that notion with a claim that the presence "was the result of continuous and systematic activity which gave rise to the liability sued on". Amicus Brief 17.

III

THE STATE'S ASSERTED INTEREST IN RESPECT OF PRODUCT LIABILITY FOR COMPONENTS IS SPECIOUS

Respondent argues for a result which will allow forum States to bring their laws and liability standards to bear, *ex post facto*, upon foreign component producers having no actual control of distribution, whenever a so-called "defective" component causes loss in forum State.

The characterization of a "defect" in a component is inherently a relative one. It is obviously necessary to consider what the component will be united with, how the union will be made, in what service the final product will be used and what are the consequences of those facts on the reliability or defectiveness of the component for its intended service.¹² No doubt in the usual case, as in this case, the component manufacturer has no control whatever of the governing relationships and no knowledge of whether, when, or how they might come into existence at some time after he has delivered the component he has been asked for.

The California consumers referred to by respondent (Resp. Brief 23) have rights and remedies against those, both at home and abroad, who actually import and sell there.¹³ The California distributors referred to (Resp. Brief 23) are in different situations, not present here, depending on contract relations over which they

¹² The discussion in *Barker v. Lull Engineering Co.*, 20 Cal. 3d 413, 143 Cal. Rptr. 225 (1978) shows how difficult it is to define "defect" in proper relation to intentions and circumstances. *Lee v. Butcher Boy*, 169 Cal. App. 3d 375, 386-87, 215 Cal. Rptr. 195, 200 (1985) illustrates the relevance of proper design and specifications and proper installation of the component by the maker of the finished product.

¹³ See, e.g., *daSilveira v. Westphalia Separator Co.*, 248 Cal. App. 2d 789, 793, 57 Cal. Rptr. 62, 65 n.1; *Kasel v. Remington Arms Co.*, 24 Cal. App. 3d 711, 724, 101 Cal. Rptr. 314, 322-23 (1972) (providing a catalog of some of those who may be held liable to the consumer).

have at least some control¹⁴ and which may give rise to jurisdiction for their suits in appropriate cases. There is no contract here between Asahi and any American.

Finally, the claim against Asahi is not, as Respondent contends (Resp. Brief 24), the near equivalent of a California tort case, dependent upon the same evidence. The claim depends instead upon whether Asahi delivered to Cheng Shin what Cheng Shin intended to buy and, if not, whether it is excused by some term of the contract or some conduct of the parties. This would also be true even if the claim were made by an injured plaintiff, since it should be unthinkable that liability would be determined in disregard of the relationship and circumstances in which the component was furnished.¹⁵

IV

THE CHAUVINISTIC ECONOMIC ARGUMENTS IN SUP- PORT OF JURISDICTION ARE MISADDRESSED AND FALLACIOUS WHILE CONSIDERATIONS OF INTER- NATIONAL LAW AND COMITY HAVE BEEN IGNORED

Respondent's argument that the decision here should be affirmed to avoid giving foreign components parts manufacturers a competitive edge is not based on any indication that Asahi is competing with California manufacturers to sell valves to Cheng Shin or to anyone else. We submit, however, that the argument is completely misaddressed to this Court. It requires no citation that we have statutes and regulations imposing, or capable of being used to impose, the restrictions of duties, quotas and embargoes upon foreign products and punishing trade offenses in respect of them. The establishment and implementation of our policies in

¹⁴ See, e.g., *Charles D. Warner & Sons, Inc. v. Seilon, Inc.*, 37 Cal. App. 3d 612, 112 Cal. Rptr. 425 (1976).

¹⁵ The manufacturer's intent as to use of its product, both in future manufacturing and ultimately use, is an element of product liability, implicating the transaction and circumstances in which a component is made and furnished. See, e.g., *Barker v. Lull Engineering Co.*, *supra*, 20 Cal. 3d at 432, 143 Cal. Rptr. at 237; *Lee v. Butcher Boy*, *supra*.

international trade lie in the powers of Congress and the Executive, who actively occupy the field. We do not think this Court has ever licensed the lower courts to make such policy by manipulating jurisdictional principles under the Due Process Clause or has itself set the example of doing so.

The picture Amicus California Manufacturers Association paints (Amicus Brief 3) of the impact of reversal here is an argument *ad terrorem* without foundation. The decision of the California Supreme Court itself represents a line of new departure. There is no indication, however, that the conditions of law and international commerce in the recent past have produced the evils Amicus suggests.

Allowing the decision here to stand, however, would have a widespread and unreasonable impact. It would compel component parts manufacturers around the world to replicate insurance coverage carried at other levels of the commercial chain, if, as is likely, they cannot obtain commercial protection by indemnity agreements from all those, American and foreign, who are closer than they to an American distribution point. It would thereby increase the costs to producers and distributors, reduce the choice available and increase the costs to consumers, probably without more than negligible effect upon the products themselves.

Respondent would have the Court justify the extension of California jurisdiction upon the basis of economic benefit to Asahi from having its valves included in some products sold here. Resp. Brief 17. It is ironic indeed to urge such an extension of power on the basis of the economic benefit to the maker from having a few components it no longer owns or controls carried willy-nilly into a State where it has never set foot, with the consequence of its being sued there for large sums. Here, as in *World-Wide Volkswagen v. Woodson*, 444 U.S. at 299, "whatever marginal revenues [Petitioner] may receive is far too attenuated a contact to justify [California's] exercise of in personam jurisdiction over [it]".

Respondent takes no account at all of the demands of international law and comity and treats the case as though it were a

matter of "interstate federalism",¹⁶ in which only commerce and litigation within our borders were involved, the geographical and cultural scope of the parties concerns were accordingly limited, and the confirmation of jurisdiction in the forum State would settle enforceability in the domicile of the defendant. Far from considering the legitimate interests and views of other nations, Respondent makes an astonishing suggestion of unilateral action by the United States to set international standards. Resp. Brief 28. There is little evidence to support Respondent's assertion that the rest of the Community of Nations look to us to institute governing standards of jurisdiction for the Community and little reason for the Court to arrogate that role to itself.

[I]n establishing bases for jurisdiction in the international sense, a legal system cannot confine its analysis solely to its own ideas of what is just, appropriate and convenient. To a degree it must take into account the views of other communities concerned. Conduct that is overly self-regarding with respect to the taking and exercise of jurisdiction can disturb the international order and produce political, economic and legal reprisals. von Mehren & Trautman, *Jurisdiction to Adjudicate: A Suggested Analysis*, 79 Harv. L. Rev. 1121, 1127 (1966).

V

REASONABLE STANDARDS CONSISTENT WITH PAST DECISIONS CAN BE STATED FOR GUIDANCE IN FOREIGN COMPONENT CASES

With the present advantage of argument and authorities from both parties and the amici, we venture to propose the following formulation for "specific jurisdiction"¹⁷ over foreign component manufacturers in products cases, in consonance with due process and standards of international law and comity:

¹⁶ *World-Wide Volkswagen v. Woodson*, *supra*, 444 U.S. at 293.

¹⁷ See *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. at 414 n.8.

Where allegedly defective merchandise has been the source of injury to the owner or others:

1. the forum State does not exceed its powers under the Due Process Clause if it asserts personal jurisdiction over a foreign corporation that delivers component parts into the stream of commerce¹⁸ having designed them for inclusion in finished products for use in the forum State¹⁹ or having purposely directed²⁰ them toward inclusion in finished products to be sold to consumers in the forum State or in the United States at large with an expectation of their being sold in the forum State;²¹

2. the forum State exceeds its powers if it asserts personal jurisdiction over a foreign supplier,²² based on delivery of component parts under contract to a purchaser abroad who incorporates them into finished prod-

¹⁸ See *World-Wide Volkswagen v. Woodson*, *supra* 444 U.S. at 297-98.

¹⁹ See *Calder v. Jones*, *supra*, 465 U.S. at 789-90; *Duple Motor Bodies, Ltd. v. Hollingsworth*, *supra*.

²⁰ See *Keeton v. Hustler Magazine, Inc.*, *supra*, 465 U.S. at 774; *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 85 L. Ed. 2d 528, 541 (1985); *cf.*, *World-Wide Volkswagen v. Woodson*, *supra*, 444 U.S. at 295 ("serve or seek to serve").

²¹ See *Calder v. Jones*, *supra*, 465 U.S. at 789-90; *cf.*, *Humble v. Toyota Motor Co. Ltd.*, 727 F.2d 709 (8th Cir. 1984); *Hutson v. Fehr Bros.*, 584 F.2d 833 (8th Cir. 1978), *cert. denied* 439 U.S. 983 (1978).

²² In this Court contracts made abroad between foreigners have not yet been found to have a sufficient connection with the forum state to support jurisdiction; even in interstate cases at least one party has been domiciled in the forum State where jurisdiction has been upheld. *McGee v. International Life Ins. Co.*, 355 U.S. 220 (1957); *Burger King Corp. v. Rudzewicz*, *supra*.

ucts which it unilaterally²³ exports for ultimate sale in the forum State.²⁴

CONCLUSION

For the foregoing reasons and those stated in our opening Brief we submit that the decision of the Supreme Court of California should be reversed.

Respectfully submitted,

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²³ See *Hanson v. Denckla*, *supra*, 357 U.S. at 253; *Kulko v. California Superior Court*, *supra*, 436 U.S. at 93-94; *World-Wide Volkswagen v. Woodson*, *supra*, 444 U.S. at 298; *Burger King Corp. v. Rudzewicz*, *supra*, 85 L. Ed. 2d at 542.

²⁴ *Cf.* *Hanson v. Denckla*, *supra* and *Shaffer v. Heitner*, *supra*, with *McGee v. International Life Ins. Co.*, *supra* and *Burger King Corp. v. Rudzewicz*, *supra*, on the insubstantiality of the contract's connection with the forum State.

(4)
No. 85-693

Supreme Court, U.S.

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In the Supreme Court of the United States

October Term, 1985

ASHAHI METAL INDUSTRY CO., LTD.,

Petitioner,

vs.

SUPERIOR COURT OF CALIFORNIA IN AND FOR
THE COUNTY OF SOLANO (CHENG SHIN RUBBER
INDUSTRIAL CO., LTD., REAL PARTY IN INTEREST),

Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT
OF THE STATE OF CALIFORNIA

BRIEF OF AMICUS CURIAE ALCAN ALUMINIO DO BRASIL, S.A. IN SUPPORT OF PETITIONER

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Respondent.

**ON WRIT OF CERTIORARI TO THE SUPREME COURT
OF THE STATE OF CALIFORNIA**

**BRIEF OF AMICUS CURIAE
ALCAN ALUMINIO DO BRASIL, S.A.
IN SUPPORT OF PETITIONER**

INTEREST OF AMICUS CURIAE

Alcan Aluminio do Brasil, S.A. ("Alcan") is a Brazilian corporation with headquarters in Sao Paulo, Brazil. Alcan is a wholly integrated aluminum manufacturer. All of its operations take place in Brazil.

Alcan is presently being sued by various plaintiffs in the United States and Puerto Rico, notwithstanding the fact that Alcan has no presence in the United States or

Puerto Rico; and the cookers which were alleged to have caused the injuries involved in these cases were designed, manufactured and sold in Brazil.

Suing Alcan in the United States places an unfair burden on Alcan by forcing it to defend itself halfway around the world and subjects it to a series of laws and regulations of a jurisdiction whose laws and regulations provide no protection or benefit to it in connection with its activities.

Written consent to file this brief has been obtained from counsel for Petitioner and Respondent. Copies are on file with the Clerk of this Court.

SUMMARY OF ARGUMENT

This case presents an issue of growing concern to corporations whose products find their way into the expanding international marketplace. That issue is whether the presence of a company's goods in the United States subjects it to the courts and laws of the United States even though it has no presence in the United States and designs, manufactures and sells its products outside of the United States.

It is the position of Alcan that the assertion of jurisdiction over foreign national corporations simply because of the existence of their product in the United States, as exemplified by this case, is improper. These decisions conflict with the guidelines articulated by this Court in *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980), and they fail to acknowledge the substantially greater burden in establishing a basis in fairness when jurisdiction is asserted across national as opposed to state boundaries.

Alcan believes that the proper standard to be adopted by this Court is that promulgated in the case of *Hanson v. Denckla*, 357 U.S. 235 (1958), that a defendant must be connected to a forum to such a degree that he benefits from the laws of a forum before he can be sued in that forum. Because of the potential for abuse and inherent unfairness in requiring a foreign national to defend a case in a different country with different laws, customs and often language, this Court should require that a foreign national be receiving the benefits and protection of those laws prior to being subjected to liability under those laws. Any other standard would be an impractical standard and inherently unfair. Adopting such a standard would not disadvantage American consumers whose state and local legislative authorities have adequate measures available to them to protect the public.

Finally, permitting the exercise of jurisdiction in such cases does not resolve all the constitutional controversies inherent in these cases, since an attempt by California to adjudicate liability under California law would simply raise the foreign commerce issue as to whether a state law burdens foreign commerce when it applies to activities which all take place outside of the United States.

For the foregoing reasons, Alcan believes the decision of the Supreme Court of California should be reversed.

ARGUMENT

I. DUE PROCESS REQUIRES THE PRESENCE OF A PRODUCT AND PURPOSEFUL EFFORT TO AVAIL ONESELF OF THE PRIVILEGE OF CONDUCTING BUSINESS IN THE FORUM SEEKING TO ASSERT JURISDICTION.

a. Due Process Requires More Than The Foreseeable Presence Of A Product In The Jurisdiction.

In *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980), this Court clearly stated that more than mere foreseeability that a product will enter a jurisdiction is necessary in order for a court in that jurisdiction to assert in personam jurisdiction. In this regard this Court said:

The foreseeability that is critical to due process analysis is not the mere likelihood that a product will find its way into the forum state, but rather is that the defendant's conduct and connection with the forum are such that he should reasonably anticipate being hauled into court. Nor can jurisdiction be supported on the theory that petitioners earn substantial revenue from goods used in Oklahoma.

Id. at 297.

In making this evaluation—that a defendant's conduct and connection with the forum are such that he should reasonably anticipate being haled into court—it seems rather trite to point out that there is a great difference between whether or not a U.S. national might be sued in another state as contrasted with the expectation by a

foreign national that it might be sued in another country for a product he sold in his country. In fact, the differences are as significant as the difference between movement across state borders as contrasted with movement across national borders.

The vast majority of cases on in personam jurisdiction, and all of the prior in personam jurisdiction¹ cases before this Court, have involved the assertion of jurisdiction between U.S. nationals and among states. Some courts have applied these principles, as has the California Supreme Court in this case, to foreign nationals operating exclusively in their own countries without any effort to recognize the significant difference between U.S. states and other nations. See, e.g., *Nelson v. Park Industries*, 717 F.2d 1120 (7th Cir. 1983); *Oswalt v. Scripto, Inc.*, 616 F.2d 191 (5th Cir. 1980); and *Hedrick v. Daiko Shoji Co.*, 715 F.2d 1355 (9th Cir. 1983) *reh. granted, op. withdrawn, in part*, 733 F.2d 1335 (9th Cir. 1984).

However, not all courts have been insensitive to the common underlying national character that permits the assertion of in personam jurisdiction between states. In *Ford Motor Company v. Atwood Vacuum Machine*, 392 So. 2d 1305 (Fla. 1981) *cert. denied* 452 U.S. 901, the Florida Supreme Court allowed the assertion of jurisdiction on a citizen of another state recognizing that it was applying American municipal law, not a form of international law:

The peculiar features of the jurisdictional problem in the United States, then, is that our national economic and social unity is conducive to the full panoply of

1. Clearly, this excepts *Helicopteros Nacionales de Columbia, S.A. v. Hall*, 466 U.S. 408 (1984) where the issue was general rather than specific jurisdiction, since specific jurisdiction is the issue involved in the present case.

substantive transactions found internally in a unitary state but our political plurality requires a choice of law and jurisdictional rules as among separate sovereigns. The combination would be unendurable as a practical matter but for two facts. First, there are powerful historical and cultural forces that conduce to similarity and reciprocity of state law. Second, the Full Faith and Credit Clause and the Due Process Clause embody judicially enforceable limitations on state-court authority. However, interpreted from time to time, they make state-court jurisdiction a matter of American municipal law and not a species of demi-international law.

Atwood at 1309, citing Hazard, *A General Theory of State-Court Jurisdiction*, 1965 Sup. Ct. Rev. 241, 246-247 (citations omitted).

It was this line of reasoning that permitted the Florida Court of Appeals, post *Atwood*, to hold that the assertion of in personam jurisdiction upon a German company who designed, manufactured and sold a product in Germany was prohibited by the Due Process Clause of the United States Constitution where the only connection with Florida jurisdiction was the foreseeable existence of its product in Florida. *Maschinenfabrik Seydelmann v. Altman*, 468 So. 2d 826 (Fla. 2d DCA, 1985). In *Seydelmann* the Florida Appellate Court stated:

(c) *Seydelmann* carries on no discernible activities in Florida. The only nexus between *Seydelmann* and Florida is the presence in Florida of meat grinders manufactured by *Seydelmann* in Germany. The minimum contacts test is not met merely by showing that a manufacturer could foresee that his product would

be used in a particular state and that he derived some indirect economic benefit from its use.

The *Seydelmann* court implicitly recognized that the mere application of foreseeable use and indirect economic benefit is in reality no standard and, in the present context of a world economy, would give state courts worldwide jurisdiction as a practical matter.

This Court should reject the notion that state and federal courts can exercise what is tantamount to worldwide jurisdiction and adopt a standard more realistic and fair.

b. This Court Should Reapply The Standard Of *Hanson v. Denckla* In The International Context.

In *World-Wide Volkswagen, supra*, this Court reaffirmed the principle in *Hanson v. Denckla*, 357 U.S. 235 (1958), that a corporation meets the minimum contacts test when it "purposefully avails itself of the privilege of conducting activities within the forum state." *Hanson* at 253.

That principle has been subject to review by courts both before and after *Volkswagen*, and there is substantial consensus that a person purposefully avails himself of the privilege of doing business in a forum when he "invokes the benefits and protections of its law." In this regard the court in *La Voie v. General Aerospace Materials Co., Inc.*, 579 F. Supp. 298 (D.C. Mass. 1984) stated:

"Having ruled that the Massachusetts long-arm statute authorizes this Court to assert jurisdiction, the next matter to consider is whether the assertion of jurisdiction is consistent with the requirements of due

process. In *International Shoe Co. v. Washington*, 326 U.S. 310 (1945), and its progeny, the United States Supreme Court determined that a court may assert jurisdiction over a person only if that person has "certain minimum contacts with [the state] such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" 326 U.S. at 316. A court's analysis should focus on the interests and on the activities of the foreign defendant in the forum state, *Hahn v. Vermont Law School*, 698 F.2d at 51, and on whether the defendant 'purposefully avail[ed] itself of the privilege of conducting activities within the forum [s]tate, thus invoking the benefits and protections of its laws.' *Hanson v. Denckla*, 357 U.S. 235, 253 (1958)."

See also *Mountaire Feeds, Inc. v. Argo Impex, S.A.*, 677 F.2d 651 (8th Cir. 1982); *Product Promotions, Inc. v. Cousteau*, 495 F.2d 483 (5th Cir. 1974).

This standard of conduct has numerous advantages. First, it is objective and a party can know at the time it is undertaking activity whether or not that activity is subjecting it to jurisdiction in another forum. It is a fairly simple procedure to ask whether a particular type of activity invokes the benefits or protection of the laws of a forum. In this case it is difficult to imagine how a company who designs, manufactures, and sells a product in the Far East is benefitting or being protected by California law.

Second, it is balanced. It seems inherently contrary to the notion of traditional fairness to subject someone to liability under a standard of laws, which gives him no

protection or benefit. Certainly, that is the position in which the petitioner finds itself in this case. The only laws which give it protection are those of Taiwan and/or Japan, while it is being subjected to liability under the laws of California.

Third, it is consistent with the idea that one expects to defend a case in the forum before being haled into court in that forum. Certainly, if a party elects to enjoy the benefits and protection of the laws of a forum, it should expect to defend itself in that forum. In the same regard, if a party does not even expect to avail itself of the benefits of the forum it should rightfully not be haled into court in the forum.

In *Volkswagen*, this Court felt that it was unfair to haul World-Wide into the Oklahoma court even though it could foresee that its car might be used there. The Court noted World-Wide's failure to sell cars directly into that jurisdiction. Clearly, World-Wide was not in a position to benefit from the laws of Oklahoma; it should not be expected to defend a case there.

The petitioner is even in a more compelling position. It makes its sales in a foreign country. It is being asked to defend a lawsuit halfway around the world. It can hardly be said to have invoked the benefits of California's laws or its protections and it would be clearly unfair, inequitable and inconsistent with the principles of *Hanson* and *Volkswagen* to subject it to the jurisdiction of this court.

II. FAILURE TO PERMIT THE EXERCISE OF IN PERSONAM JURISDICTION UPON A FOREIGN NATIONAL CONDUCTING BUSINESS ABROAD DOES NOT LEAVE THE CONSUMER WITHOUT A REMEDY.

As this case graphically illustrates, an injured consumer has more than an adequate remedy for an injury resulting from a defectively designed and/or manufactured product. In this case the injured plaintiff did not even sue the defendant. Injured plaintiffs have, at a minimum, importers and retailers in the United States who would be subject to suit. If states, or the United States, believe greater protection is necessary, they can legislate greater insurance protection by requiring importers and/or retailers of foreign manufactured products to have a minimum level of insurance in the United States to cover the cost of the products they sell.

III. PERMITTING THE EXERCISE OF IN PERSONAM JURISDICTION IN CASES SUCH AS THE CASE AT BAR CREATES THE POTENTIAL FOR ABUSE.

In a case presently pending in the Federal District Court in Miami involving this amicus, *Lucrecia Hernandez v. Alcan Aluminio do Brasil, S.A., et al.*, U. S. District Court, Southern District of Florida, Case No. 85-2729-CIV-SCOTT, the plaintiff who alleges injury by a pressure cooker sued Alcan, its U.S. affiliate who neither makes nor sells pressure cookers and its Canadian parent who neither makes nor sells pressure cookers. The plaintiff has never made an effort to sue the Miami retailer or importer even though she was fully capable of doing so and, in fact, has allowed the statute of limitations to run against these parties forever barring her claims against them. Why

would a plaintiff clearly ignore immediately available and directly related parties and instead sue a series of Alcan companies whose common characteristic is that they are foreign to the Florida jurisdiction (the U.S. company, Alcan Aluminum Corporation, is an Ohio corporation with head offices outside of Florida); two of the companies do not even exist in the United States, and only one, Alcan Aluminio do Brasil, S.A., has any conceivable relevance to the claim. The answer is simple; the plaintiff wants to economically force a settlement regardless of the merits of her claim.

It is well recognized that defending a lawsuit outside of the jurisdiction in which you reside is more costly than defending a lawsuit in your place of residence. Thus, being forced to defend a case in another state puts you at some economic disadvantage. However, having to defend a case in a completely different country, many thousands of miles away, with the difficulties of language and culture, can create enormous disadvantages of cost for foreign national defendants. These economic disadvantages can obviate the fundamental fairness upon which the U.S. justice system rests.

IV. THE EXERCISE OF JURISDICTION BY U.S. COURTS IMPLIES THAT FOREIGN COURTS MAY EXERCISE JURISDICTION ON U.S. NATIONALS UNDER SIMILAR CIRCUMSTANCES.

The recent expansive exercise of jurisdiction as exemplified by the facts of this case have thus far been limited to courts in this country. However, if it is fair for a U.S. court to exercise jurisdiction over a foreign national simply because some of its products foreseeably make their way into the United States through the efforts

of independent third parties, is it not equally fair for U.S. nationals to be sued by foreign nationals in foreign jurisdictions? If an American is sued in an Iranian Court, must he appear and develop a record to show Iranian procedure denied him Due Process to forestall enforcement of the Iranian judgment by a U.S. Court?

This Court should consider the implications of a decision that the Due Process requirement of the Federal Constitution is met by the mere foreseeable existence of a foreign national's product in a country. As an American might find defending a case in Iran an unfair burden simply because its product was imported into Iran by a third party, so the petitioner and the amicus in this case find it an unfair burden to defend cases in the U.S. where the introduction of its product into the U.S. was a result of activities of third parties.

V. IF THIS COURT WERE TO PERMIT THE EXERCISE OF IN PERSONAM JURISDICTION AGAINST THIS PETITIONER, THE APPLICATION OF CALIFORNIA LAW IN THIS CASE WOULD RAISE SERIOUS FOREIGN COMMERCE CLAUSE ISSUES.

It would be incorrect for this Court to assume that, if it should hold the exercise of in personam jurisdiction in this case is proper, the California courts would then be entitled to adjudicate liability under California law. We believe such a result would be precluded by the Foreign Commerce Clause of the U.S. Constitution.

The Foreign Commerce Clause of the United States Constitution provides that it shall be the exclusive province of Congress, "To regulate commerce with foreign nations," United States Constitution, Article I, Section 8. The clause

prohibits the individual states from interfering in matters of foreign commerce. This Court has consistently interpreted this to mean that state laws are unconstitutional to the extent they burden foreign commerce. This Court's most recent statement concerning this prohibition is contained in *Japan Line, Ltd. v. County of Los Angeles*, 441 U.S. 434 (1979), and that case makes it clear that it would be unconstitutional to impose liability on petitioner in this case under California law.

It is not in dispute that petitioner does not exist in the United States. Third party plaintiff attempts to assert jurisdiction based on the alleged minimum contacts with the forum. Nonetheless, it is not disputed that petitioner designed, manufactured and sold the valve in question all outside of the United States. Yet, plaintiff here seeks to have petitioner held liable for injuries caused by alleged defects in the valve under California law. This would have the clear result of imposing liability under California law for actions taken wholly in foreign commerce. This result is simply contrary to the precepts of *Japan Line*.

In *Japan Line*, a foreign company clearly caused its product to be located within the geographic boundaries of California and there was no dispute that Japan Line's container was, therefore, subject to the jurisdiction of U.S. courts. Nor was it an issue as to whether the Due Process Clause of the United States Constitution permitted a property tax at issue to be assessed. The only obstacle to the State's ability to collect the tax was that it was a state imposed liability on an object this Court determined was still essentially involved in commercial activities being conducted outside of the United States, although the container had momentarily come to rest in California.

Plaintiff in this case would have the California Court impose California law on the activities of petitioner conducted wholly outside the United States. While in *Japan Line*, Japan Line owned the container in the United States, petitioner was not the owner of the chattel which allegedly injured the plaintiff. Its activities were entirely in foreign commerce and the imposition of California law on those activities necessarily results in a violation of the Foreign Commerce Clause.

Thus, if this Court were to find in personam jurisdiction, it would then have to apply Taiwanese and/or Japanese law to determine the existence and extent of liability, and that task might better be left to those courts.

CONCLUSION

This Court should clearly reject the notion that United States courts can, consistent with the Due Process Clause, exercise in personam jurisdiction over foreign nationals who design, manufacture and sell a product outside of the United States, simply because it is reasonably foreseeable that the product will make its way into the United States through the efforts of third parties.

Such a doctrine in today's international marketplace would, as a practical matter, confer world-wide jurisdiction in the United States.

U.S. citizens are adequately protected by limiting jurisdiction to those entities who introduce the product into the United States or its retailer and laws requiring liability insurance offer the opportunity for additional protection if the legislative aim of the government deems it necessary. Denying in personam jurisdiction would also eliminate the potential for substantial abuse and unfairness of haling foreign nationals into a U.S. forum,

putting them at a severe economic and cultural disadvantage, and then attempting to judge propriety of their activities not by the laws of the country in which those activities took place, but rather by the laws of a state in which one of their products comes to reside.

The present doctrine developed by this Court promulgated in *Volkswagen* and *Hanson*, if adapted to the foreign context, provides a sound theoretical basis to reject the application of in personam jurisdiction in this case, and Amicus urges this Court to so hold.

Respectfully submitted,

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IN THE
Supreme Court of the United States

OCTOBER TERM, 1985

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v. *Petitioner,*

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**BRIEF OF THE AMERICAN CHAMBER OF COMMERCE
IN THE UNITED KINGDOM AND THE
CONFEDERATION OF BRITISH INDUSTRY
AS AMICI CURIAE IN SUPPORT OF PETITIONER**

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QUESTIONS PRESENTED

1. Did California violate the due process clause by seeking to exercise personal jurisdiction over a Japanese manufacturer merely because it sold components to a Taiwanese manufacturer with an awareness that some of its parts would find their way into the United States in the latter's final product?

2. Does California's exercise of personal jurisdiction over a dispute between the foreign parties become more unreasonable because California has already presumed that its substantive law should apply?

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ASAHI METAL INDUSTRY CO., LTD.,
Petitioner,

v.

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**BRIEF OF THE AMERICAN CHAMBER OF COMMERCE
IN THE UNITED KINGDOM AND THE
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AS AMICI CURIAE IN SUPPORT OF PETITIONER ***

INTEREST OF THE AMICI CURIAE

The amici submit this brief in support of Petitioner because the decision below threatens important and legitimate interests of their member enterprises and the in-

* Petitioner and Respondent have both consented to the filing of this brief; the written consents are on file with the Clerk.

ternational business community generally. Amici believe that some of the international concerns expressed here have not been adequately addressed by the parties.

The American Chamber of Commerce in the United Kingdom ("Chamber") was founded in 1916 to promote and develop trade between the United States and Great Britain. Its primary aim continues to be to provide assistance to companies in the expansion of transatlantic trade. It is an independent, non-profit organization acting in the interests of its members to maintain a favorable climate in which this business can flourish. Its 2,200 corporate members represent, in almost equal proportions, American and British interests. The Chamber is affiliated with the Chamber of Commerce of the United States of America.

The Confederation of British Industry ("CBI") is a broad-based, non-profit organization whose membership includes 250,000 public and private companies in the United Kingdom. Half of its members are smaller firms with fewer than 200 employees. Its membership also includes most of Britain's nationalized industries and more than 200 trade associations, employer organizations and commercial associations. The CBI exists primarily to inform governments on the needs of British business.

These organizations and their members have four principal concerns about the potential adverse consequences of the decision below:

- First, a rule of U.S. law that a foreign component part manufacturer is subject to the personal jurisdiction of any U.S. court in the territory in which it may be aware its foreign customer's products might come to rest, would substantially increase the costs and uncertainties of international trade for British manufacturers.
- Second, many of the American members of the Chamber are concerned that such a U.S. rule would encourage other nations to exercise comparable

jurisdiction over American manufacturers who have no greater ties or relations with those foreign jurisdictions than Asahi has here with California.

- Third, the California Supreme Court presumed, without analysis, that California had the only substantial interest in applying its law once personal jurisdiction was found. It did not consider whether a Japanese or Taiwanese forum or law was more relevant to determining an apparent dispute about warranties and indemnification rights between two foreign companies.
- Fourth, an unqualified stream of commerce jurisdictional standard may well lead to conflicts between the governments and laws of the United Kingdom (and other countries) and the United States, to the detriment of trade between those nations.

STATEMENT

This is an indemnity dispute between two foreign manufacturers over their respective responsibilities for a motorcycle accident in California. The victim's family sued Cheng Shin, the Taiwanese tire manufacturer whose tire tubes were involved in the accident, on a tort theory. Two years later, Cheng Shin sought to implead Asahi, a Japanese tire valve manufacturer, as a third party defendant, because Asahi happened to have supplied the valves on the particular set of Cheng Shin's tire tubes involved in the accident. Cheng Shin has since settled with the California plaintiffs.

Cheng Shin sold tires throughout the world. In California, it sold tires through Cheng Shin Tire USA, Inc., a California corporation which is not a party. These sales allegedly accounted for about 20 percent of Cheng Shin's total U.S. sales. (App. to Pet. for Cert. ("App.") B-3, C-2).

Asahi was one of several valve suppliers to Cheng Shin, and apparently provided about 22 percent of the

valve stem assemblies used in Cheng Shin tubes in California. (App. B-3, C-2). In any event, Asahi's sales to Cheng Shin accounted for "a small part of [Asahi's] trade" (App. B-6)—namely less than 1.25 percent of its gross revenue in the relevant years. (App. B-2, C-2).

All of Asahi's sales to Cheng Shin occurred in Taiwan. Asahi has no presence in California, does not advertise or do business in California, and makes no sales into California. "Asahi did not design or control the system of distribution that carried its valve assemblies into California." (App. C-11). Asahi did not request Cheng Shin to market its components in California as an intermediary. It did not design, nor was it asked to design, any valve assemblies to comply with any specific California regulation or standard.

In sum, as the California Court of Appeals found, "Asahi had only such contact with California as is implicit in the fact that it sold components to another non-resident manufacturer which foreseeably would sell the finished product in California." (App. B-3). Based on this limited connection, the Court of Appeals rejected personal jurisdiction on the ground that "it would not be reasonable to require Asahi to respond to California solely on the basis of *ultimately realized foreseeability* that the product into which its component was embodied would be sold all over the world including California." (App. B-5-6) (emphasis added).

The California Supreme Court (per Bird, C.J.) reversed, because "California's interest in asserting jurisdiction over Asahi in this action is substantial." (App. C-16). The California Supreme Court also indicated that California substantive law would apply because of "California's interest in protecting its consumers, and the interests of California and Cheng Shin of avoiding inconsistent results and a multiplicity of litigation."

App. C-17). Justices Lucas and Mosk dissented. (C-19-21).

ARGUMENT

I. THE EXERCISE OF PERSONAL JURISDICTION BY THE CALIFORNIA SUPREME COURT OVER ASAHI VIOLATES THE DUE PROCESS CLAUSE OF THE U.S. CONSTITUTION

A. Asahi did not Purposefully Avail Itself of the Privilege of Conducting Activities Within California

It has been clear since *Pennoyer v. Neff*, 95 U.S. 714 (1877), that the due process clause of the U.S. Constitution limits the exercise of personal jurisdiction by state courts over non-resident defendants. While the due process standard for personal jurisdiction purposes has changed over time—particularly in the forty years from *International Shoe v. Washington*, 326 U.S. 310 (1945), to *Burger King Corp. v. Rudzewicz*, — U.S. —, 105 S. Ct. 2174 (1985)—the jurisdictional claims in the present case go well beyond any that this Court has thus far upheld. The essence of the due process test is fairness and reasonableness. This constitutional standard should apply even more forcefully where a state within our federal system seeks to assert personal jurisdiction over a foreign corporation entirely resident abroad. As James Atwood and Kingman Brewster have observed:

Since fairness is explicitly stated to be the nub of personal jurisdiction, it may be that more substantial activity within the United States should be required to bring a foreign national into an American court than to bring a citizen of one of the United States into the court of a sister state. . . . Surprise, inconvenience, and unfamiliarity (not to mention a clash of sovereignties) are not so likely when a corporation of one state is haled into the courts of another, as when a foreign national is brought before an American court.

1 J. Atwood & K. Brewster, *Antitrust and American Business Abroad* 113 (2d ed. 1981).

There is no evidence in the record that Asahi has any contacts with or purposefully availed itself of the benefits and protections of California law. The presence of Asahi's valves in California depended on decisions made solely by Cheng Shin. Cheng Shin unilaterally decided the timing, quantity and prices for its tire sales into California; when and in what quantities to use Asahi's valve components in these tires; and the timing, quantities and prices for any follow-up valve purchases from Asahi. The mere "unilateral activity of those who claim some relationship with a nonresident defendant cannot satisfy the requirement of contact with the forum State." *Hanson v. Denckla*, 357 U.S. 235, 253 (1958), *quoted in World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 298 (1980). This must be particularly true here, where Cheng Shin, the person seeking to assert a U.S. court's jurisdiction based on its own unilateral activity, is itself a nonresident.

Asahi admittedly received indirect commercial benefits from sales of Cheng Shin tires containing its valves in California. Such indirect commercial benefit, however, is not sufficient contact under *International Shoe*. To be subjected to the jurisdiction of a U.S. state court, a foreign person must enjoy "the benefits and protection of the laws of that state." *International Shoe*, 326 U.S. at 319. Indirect commercial benefit is not enough if it does not "stem from a constitutionally cognizable contact with that State." *World-Wide Volkswagen*, 444 U.S. at 299 (citing *Kulko v. California Superior Court*, 436 U.S. 84, 94-95 (1978)). Asahi receives no protection or benefit from California law, and seeks none. Therefore, it should not be subject to legal obligations in that state or be subject to the personal jurisdiction of a California court.

B. Mere Awareness that Component Parts Manufactured and Sold Abroad will be Incorporated into Finished Goods that Come to Rest in the United States is not Purposeful Activity Conferring Personal Jurisdiction Over the Foreign Manufacturer

This Court has cautioned that "the mere likelihood that a product will find its way into the forum State" is not sufficient to satisfy due process. *World-Wide Volkswagen*, 444 U.S. at 297. Otherwise, "a local California tire retailer could be forced to defend in Pennsylvania when a blowout occurs there, . . . [and] [e]very seller of chattels would in effect appoint the chattel his agent for service of process." *Id.* at 296 (citing *Erlanger Mills, Inc. v. Cohoes Fibre Mills, Inc.*, 239 F.2d 502, 507 (4th Cir. 1956)). Rather, the foreseeability required for due process analysis is that "the defendant's conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there." *World-Wide Volkswagen*, 444 U.S. at 297 (citations omitted).

In discussing this issue in *World-Wide Volkswagen* (444 U.S. at 298), this Court cited *Gray v. American Radiator & Standard Sanitary Corp.*, 22 Ill.2d 432, 176 N.E.2d 761 (1961), in a context arguably suggesting that a foreign person may be subjected to a forum's jurisdiction if it can reasonably expect its product to be purchased by consumers in the forum. In *Gray*, the Illinois Supreme Court held that an injured consumer could validly assert a claim in her home state against an Ohio manufacturer of a component safety valve contained in a water heater manufactured by a Pennsylvania corporation.

Gray, however, differs from this case. *Gray* involved persons within the United States operating within a few hundred miles of each other. As this Court recognized in *McGee v. International Life Ins. Co.*, 355 U.S. 220, 222-23 (1957), there has been an increasing nationalization of commerce within the United States.

The economic interdependence of the States was foreseen and desired by the Framers [of the Constitution]. In the Commerce Clause, they provided that the nation was to be a common market, a "free trade unit" in which the States are debarred from acting as separable economic entities.

World-Wide Volkswagen, 444 U.S. at 293 (citing *H.P. Hood & Sons, Inc. v. Du Mond*, 336 U.S. 525, 538 (1949)).¹ Even if this "fundamental transformation in the American economy" (*World-wide Volkswagen*, 444 U.S. at 293) were to justify the exercise of personal jurisdiction in *Gray*, it does not justify jurisdiction over a Japanese valve maker that produces its product 5,000 miles from U.S. shores and sells it to a foreign tire maker for assembly 6,000 miles distant.

There may be a common market within the United States, but there is as yet no common market within the world community. To expect Japanese and other foreign manufacturers to assume responsibility for compliance with the law of every nation and national subdivision where the final products in which these components are integrated may be shipped by others beyond their control, is to impose burdens on the manufacturers and their economies which they have not assumed as "sister states . . . in the context of our federal system of government." *World-Wide Volkswagen*, 444 U.S. at 293-94.

¹ However, this Court has also recognized certain jurisdictional limitations:

But it is a mistake to assume that this trend heralds the eventual demise of all restrictions on the personal jurisdiction of state courts. Those restrictions are more than a guarantee of immunity from inconvenient or distant litigation. They are a consequence of territorial limitations on the powers of the respective States.

Hanson v. Denckla, 357 U.S. at 250-51, quoted in *World-Wide Volkswagen*, 444 U.S. at 294. These restrictions upon the power of states are even more fundamental when the issue involves claims to authority extending beyond the borders of the United States itself.

A stone dropped in the Sea of Japan may create ripples that find their way to the beaches of California. But the mere fact that a faint, foreseeable reverberation may be traced to remote antecedents does not make it fair or just to hold remote persons legally responsible for it. As Judge Learned Hand observed in a leading antitrust case:

There may be agreements made beyond our borders not intended to affect imports, which do affect them. . . . Almost any limitation of the supply of goods in Europe, for example, or in South America, may have repercussions in the United States if there is trade between the two. Yet when one considers the international complication likely to arise from an effort in this country to treat such agreements as unlawful, it is safe to assume that Congress did not intend the [Sherman] Act to cover them.²

This Court has stated that the Sherman Act represents Congress' exercise of "the full extent of its constitutional power." *City of Lafayette v. Louisiana Power & Light Co.*, 435 U.S. 389, 398 (1978) (footnote omitted). If the Sherman Act is not to be construed as reaching conduct beyond our shores which has only an indirect effect within our markets in the stream of international commerce, the exercise of personal jurisdiction over persons beyond our shores whose off-shore activities have only indirect repercussions in the United States is equally unwarranted.

Asahi officials may know, or be able to learn, where Cheng Shin tires incorporating Asahi valves are shipped.

² *United States v. Aluminum Co. of America ("Alcoa")*, 148 F.2d 416, 443 (2d Cir. 1945). *Alcoa*, which as modified by *Timberlane Lumber Co. v. Bank of America*, 549 F.2d 597 (9th Cir. 1976), and *Mannington Mills, Inc. v. Congoleum Corp.*, 595 F.2d 1287 (3d Cir. 1979), represents U.S. law, has been criticized in the United Kingdom for extending U.S. jurisdiction too far. See, e.g., Amicus Curiae Brief for the British Government, *In re Uranium Antitrust Litigation*, 480 F. Supp. 1138 (N.D. Ill. 1979), reprinted in A.V. Lowe, *Extraterritorial Jurisdiction: An Annotated Collection of Legal Materials* 156 (1983). Such criticism of *Alcoa* is ironic, for the import of the quotation above is to limit U.S. jurisdiction.

If such tires are shipped to Tobago, is Asahi thereby subject to the personal jurisdiction of the courts of Trinidad and Tobago?³ Is Asahi obligated to determine whether there are resale markets for Cheng Shin tires, i.e., indirect sales to countries to which Cheng Shin itself does not ship? If Asahi learns or could learn of such third market sales, would that subject Asahi to the personal jurisdiction of the courts of those additional countries? How far back in the production chain are successive levels of component part manufacturers to be deemed to submit to the jurisdiction of the forum in which the final product comes to rest?⁴

On the facts of this case, as in these analogous scenarios, Asahi cannot be said to "purposefully direct" its activities toward California residents. *Burger King Corp.*, 105 S. Ct. at 2182-83; see also *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414 (1984). Accordingly, it is unreasonable and therefore unconstitutional for California courts to assert personal jurisdiction over Asahi.

³ Lord Ellenborough doubted that "the Isle of Tobago [could] pass a law to bind the rights of the whole world." *Buchanan v. Rucker*, 9 East. 192, 194 (1808). Such is the logical import of the California Supreme Court's decision here, however.

⁴ It is useful to test the reasonableness of the California Supreme Court's stream of commerce standard by considering how a foreign forum might apply it against an American enterprise in Asahi's shoes. Assume a U.S. semiconductor manufacturer in California sells microelectronic chips to a U.K. computer manufacturer, which incorporates the chips into its computers and then exports them to Tobago and other countries. If a court in Tobago exercises personal jurisdiction over the U.S. chip manufacturer solely on these facts, would a U.S. court recognize the foreign court's judgment? See Mann, *The Doctrine of Jurisdiction in International Law*, 111 *Recueil des Cours* 1, 75 (1964) (stating that the problem of recognizing foreign judgments is "very largely" identical with the problem of foreign courts' jurisdiction; "to be recognized by [a U.S.] forum, the foreign judgment must be pronounced by a court having jurisdiction").

C. Neither California's Interest in Adjudicating this Dispute nor the Assumption that California Jurisdiction is Likely to Prove More Favorable to the Claimant is a Sufficient Basis for a California Court to Assert Personal Jurisdiction over a Foreign Component Part Manufacturer such as Asahi

The California Supreme Court has linked the determination that it has personal jurisdiction over Asahi to the conclusion that California has a significant interest in adjudicating the dispute under California law.⁵ Like other states in our federal system, California encourages liability suits by injured residents. California law also allows defendants (like Cheng Shin) to file contribution claims against alleged co-tortfeasors, thereby limiting the burden for any one defendant of paying generous recoveries. Undoubtedly an expansive rule of personal jurisdiction in U.S. courts advantages plaintiffs and cross-plaintiffs, particularly since many other countries strictly limit any opportunity for enormous damage awards in their courts. *N.Y. Times*, April 6, 1986, at 32, col. 1.⁶

But this advantage to plaintiffs or cross-plaintiffs alone cannot justify an extraordinary assertion of personal ju-

⁵ The court stated: "Apart from providing a forum to California plaintiffs to ensure that they are compensated, California has an interest in enforcing its safety standards and in deterring Asahi and other foreign manufacturers from shipping defective products into the state." App. C-16-17 n.10.

⁶ This policy difference between the United States and other legal systems is well known. For example, in *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 240 (1981), this Court recognized that U.S. laws concerning liability, capacity to sue and damages are more favorable than those of Scotland. Similarly, in the late 1970's the United Kingdom and the United States negotiated a convention on the mutual recognition of civil judgments. Those negotiations were broken off and have not been revived, in part because of British concerns about the amount of damages awarded in U.S. product liability cases. See generally North, *The Draft U.K./U.S. Judgments Convention: A British Viewpoint*, 1 *Nw. J. Int'l L. & Bus.* 219, 228-38 (1979).

jurisdiction. Section 421(1) of the draft Restatement of the Foreign Relations Law of the United States (Revised) ("Restatement (Revised)") makes clear that a court's exercise of adjudicatory (*i.e.*, personal) jurisdiction must be "reasonable."⁷ Similarly, Section 403(1) of the Restatement (Revised) recognizes that U.S. law limits the jurisdiction of courts to:

prescribe law with respect to activities, relations, status, or interests of persons or things having connections with another state or states when the exercise of such jurisdiction is unreasonable.

Restatement (Revised), *supra*, § 403(1) (Tent. Final Draft 1985). Section 403(2) of the Restatement identifies eight non-exclusive factors to be considered in determining reasonableness.⁸ These factors weigh strongly

⁷ Section 421(1) provides:

A state may, through its courts or administrative tribunals, exercise jurisdiction to adjudicate with respect to a person or thing, if the relationship of the person or thing to the state is such as to make the exercise of such jurisdiction reasonable.

Restatement of the Foreign Relations Law of the United States (Revised) § 421(1) (Tent. Final Draft 1985). The Restatement derives this general principle from both U.S. case law and international standards. *Id.* Reporters' Note 2. See also I. Brownlie, *Principles of Public International Law* 298 (3d ed. 1979); Mann, *supra* note 4, at 77 (both discussing the requirement of a "substantial connection" between the defendant and the forum).

⁸ Section 403(2) provides:

Whether the exercise of jurisdiction is reasonable or unreasonable is judged by evaluating all the relevant factors, including, where appropriate,

(a) the extent to which the activity (i) takes place within the regulating state, or (ii) has substantial, direct, and foreseeable effect upon or in the regulating state;

(b) the connections, such as nationality, residence, or economic activity, between the regulating state and the persons principally responsible for the activity to be regulated, or

against the reasonableness of a California adjudication here. Asahi's sale of valves to Taiwan did not have a direct effect in California. The parties in dispute are Taiwanese and Japanese, and the dispute between them relates to their terms of trade in the flow of commerce between Japan and Taiwan. Because Asahi did not purposefully avail itself of the laws of California, it had no

between that state and those whom the law or regulation is designed to protect;

(c) the character of the activity to be regulated, the importance of regulation to the regulating state, the extent to which other states regulate such activities, and the degree to which the desirability of such regulation is generally accepted;

(d) the existence of justified expectations that might be protected or hurt by the regulation in question;

(e) the importance of the regulation in question to the international political, legal or economic system;

(f) the extent to which such regulation is consistent with the traditions of the international system;

(g) the extent to which another state may have an interest in regulating the activity; and

(h) the likelihood of conflict with regulation by other states. Restatement (Revised), *supra*, § 403(2).

These criteria explicitly relate only to prescriptive, not adjudicatory, jurisdiction. However, the fact that courts of different legal systems necessarily apply differing prescriptive standards to issues such as product liability means that even the question of whether a court should adjudicate needs testing against these reasonableness criteria. It has become apparent that this Court is not in a position to exercise supervision over state choice of law questions, short of wholly arbitrary actions. *Allstate Ins. Co. v. Hague*, 449 U.S. 302, 312-13 (1981); *Clay v. Sun Ins. Office, Ltd.*, 377 U.S. 179, 181-82 (1964). Accordingly, it is appropriate to consider the criteria for both prescriptive and adjudicatory jurisdiction in weighing a due process challenge to a U.S. court's jurisdiction. *Cf. Allstate Ins. Co.*, 449 U.S. at 317 n.23 (noting that both choice of law and personal jurisdiction "are often closely related and to a substantial degree depend upon similar considerations.") (quoting *Shaffer v. Heitner*, 433 U.S. 186, 224-25 (1977) (Brennan, J., concurring in part and dissenting in part)).

justified expectation of being reached by California law when it sold its valves to Taiwan. California's desire to adjudicate the issue of Asahi's liability to Cheng Shin would apply policies that will significantly increase costs and uncertainties of international commerce. Both Japan and Taiwan can be presumed to have interests in regulating this dispute; if this Court establishes a precedent that a U.S. adjudication is appropriate in these circumstances, conflicts with the available remedies of other states are likely to result.⁹

When nations' commercial laws conflict, the chances increase that they will undermine each other's judicial authority. This is already emerging as a problem in the tort liability area. For example, in *Smith Kline & French Laboratories Ltd. v. Bloch*, [1983] 2 All E.R. 72 (C.A. 1982), the English Court of Appeal upheld an injunction preventing an English plaintiff from continuing an action in the United States against his former English employer and its American parent. The plaintiff's original complaint had multiple counts, with tort as a key element. Lord Denning referred to the "fabulous damages" U.S. juries are "prone to award" in tort cases as one justification for the injunction. *Id.* at 74.¹⁰ Where there is pro-

⁹ Similar considerations would apply even if the California court were to reconsider its present position and apply Japanese or Taiwanese law to determine Asahi's alleged obligation to indemnify Cheng Shin. The trial of such a case would necessarily involve legal standards and procedures foreign to Asahi, including plaintiff's right to a jury trial and broad pretrial discovery. That is not appropriate where, as here, the U.S. court's exercise of personal jurisdiction is unreasonable and the U.S. court is an inconvenient forum.

¹⁰ The English plaintiff later filed an amended complaint dropping the English subsidiary and alleging only U.S. antitrust violations. The Court of Appeal held that because of these differences, continuation of that action in the U.S. court would not violate its earlier injunction. *Smith Kline & French Lab. Ltd. v. Bloch*, The Times (C.A. Nov. 13, 1984).

tracted conflict, judicial judgments of one nation might not be enforced in another's courts. *E.g.*, U.K. Protection of Trading Interests Act 1980, c.11, § 4. More rarely, laws are passed to block or claw back damage awards viewed as excessive and illegitimate. *Id.* § 6. This is a regrettable development between friendly nations. Sometimes conflicts may be unavoidable, but not here.

Where the claim of the U.S. forum to exercise jurisdiction is tenuous and fortuitous, even if the plaintiff would benefit and a forum interest would be served, this Court has

held it a denial of due process of law when a state of the Union attempts to draw into control of its law otherwise foreign controversies, on slight connections, because it is a forum state. . . . The purpose of a conflicts-of-laws doctrine is to assure that a case will be treated in the same way under the appropriate law regardless of the fortuitous circumstances which often determine the forum.

Lauritzen v. Larsen, 345 U.S. 571, 590-91 (1953) (citations omitted). That purpose requires reversal of the decision below.

II. THIS COURT HAS REPEATEDLY RECOGNIZED THAT THE INTERESTS OF INTERNATIONAL COMMERCE REQUIRE CONSIDERATION OF FACTORS NOT NECESSARILY PRESENT IN INTRA-U.S. CONTROVERSIES

This Court has applied the reasonableness limitation on jurisdiction by holding in a series of cases that jurisdictional rules designed primarily for the domestic context should not be mechanically applied in cases involving international commerce. This case fits within that pattern.

In *Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1 (1972), this Court upheld a choice of law clause calling for adjudication in London, reversing the Court of Appeals,

which had resisted the "ouster" of U.S. jurisdiction. In *Scherk v. Alberto-Culver Co.*, 417 U.S. 506 (1974), this Court upheld a clause calling for arbitration in Paris, reversing the lower court's application of a domestic rule precluding arbitration of securities disputes.

In *Piper Aircraft Co. v. Reyno*, 454 U.S. 235 (1981), this Court reversed the lower court's decision that the foreign plaintiffs could choose a U.S. forum to litigate a product liability dispute against a U.S. manufacturer. This Court held that Scotland was a more appropriate forum, even though it was clear that any damages plaintiffs might recover in Scotland would be far less than in this country.¹¹

In *Helicopteros*, 466 U.S. 408, this Court reversed the Supreme Court of Texas and held personal jurisdiction to be lacking in a case where the foreign defendant had far greater ties to the United States and to the forum state than Asahi does here. And most recently, in *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth Inc.*, — U.S. —, 105 S. Ct. 3346 (1985), this Court upheld a clause calling for arbitration in Tokyo, reversing the lower court's decision that had applied a domestic policy precluding arbitration of antitrust claims.

In each of these cases, at least one of the parties was a U.S. resident. Yet this Court determined that a foreign forum, not a U.S. court, was the appropriate place to resolve the controversy. In the present case, there is

¹¹ While the doctrine of forum non conveniens applied in *Piper* is not grounded in the due process clause of the Constitution, there are common considerations relevant to both. That the law available to the claimant in an alternative forum is less favorable to its chances of recovery is only one factor under both forum non conveniens and due process balancing tests. Moreover, that factor is not controlling where giving it excessive weight would be unreasonable. *Piper*, 454 U.S. at 250; *World-Wide Volkswagen*, 444 U.S. at 294.

no U.S. party. Two foreign parties (or their insurers) are linked in some way with an accident in the United States. One of the parties (Taiwanese) wants to litigate its indemnity claim against the other party (Japanese) in California. On these facts, California clearly is not a reasonable forum to adjudicate this dispute.

CONCLUSION

United States and foreign governments, producers and consumers share an interest in developing a fair and reasonable method for allocating the costs of injuries resulting from defective products in the flow of international trade. That interest will not be served if every nation reaches as far as it can to impose its distinctive standards in unpredictable ways. This case provides this Court with an opportunity to influence the development of customary international law in this area by restraining exorbitant claims of jurisdiction over foreign persons.

As shown above, this Court has demonstrated in a variety of settings that the factors determining the reasonableness and fairness of U.S. personal jurisdiction are to be weighted differently for essentially foreign controversies than for domestic disputes. Many state courts, however, are not following this lead. Instead, they increasingly seek to extend their jurisdiction over persons outside the United States, thereby injecting a burdensome uncertainty into international trade. In *Helicopteros* and in a number of recent domestic cases, this Court has limited the reach of state court judicial jurisdiction to ensure that such jurisdiction accords with due process requirements of fairness and reasonableness. By reversing California's jurisdictional claim in this case, this Court would both reaffirm its recent holdings on state court jurisdiction and promote reasonable regulation of international trade.

Accordingly, the judgment of the California Supreme Court should be reversed.

Respectfully submitted,

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IN THE
Supreme Court of the United States
OCTOBER TERM, 1935

ARABI METAL INDUSTRY Co., LTD.,
Petitioner,

v.

**SUPERIOR COURT OF CALIFORNIA
IN AND FOR THE COUNTY OF SOLANO
(CHENG SHIN RUBBER INDUSTRIAL Co., LTD.,
REAL PARTY IN INTEREST),**
Respondent.

On Writ of Certiorari to the
Supreme Court of California

**BRIEF FOR CASSIAR MINING CORPORATION AS
AMICUS CURIAE IN SUPPORT OF THE PETITIONER**

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April 17, 1936

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IN THE
Supreme Court of the United States

OCTOBER TERM, 1985

No. 85-693

ASAHI METAL INDUSTRY CO., LTD.,
v. *Petitioner,*

SUPERIOR COURT OF CALIFORNIA
IN AND FOR THE COUNTY OF SOLANO
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REAL PARTY IN INTEREST),
Respondent.

On Writ of Certiorari to the
Supreme Court of California

**BRIEF FOR CASSIAR MINING CORPORATION AS
AMICUS CURIAE IN SUPPORT OF THE PETITIONER**

INTEREST OF AMICUS CURIAE

Cassiar Mining Corporation submits this brief as *amicus curiae*, urging reversal.¹

Cassiar is a Canadian mining company located in Vancouver, British Columbia. Since 1953, Cassiar has mined

¹ Pursuant to Rule 36.2, Cassiar has filed written consents of the parties to the submission of this brief as *amicus curiae*.

raw asbestos fibre in British Columbia, and has sold its fibre to customers in Canada, the United States, and many other countries. In 1984, approximately nine percent of Cassiar's sales were to customers in the United States.

The Cassiar mine produces a "long," high-grade asbestos fibre normally used as one of several raw materials in the manufacture of cement and textile products. Cassiar has always sold its fibre to a discrete, established customer base which manufactures these kinds of products. Some of Cassiar's customers produce finished products containing asbestos fibre (*e.g.*, cement pipe), while others make and sell only component parts made from asbestos fibre (*e.g.*, yarn, clutch facings, and brake linings) for use in the ultimate manufacture of finished products.

Since Cassiar's first sale of fibre in 1953, Cassiar's United States customers have been located in a limited number of states. In 1984, for example, Cassiar sold fibre to customers in only six states—California, Connecticut, New Jersey, North Carolina, Ohio, and Pennsylvania. Cassiar has always sold its fibre to its customers, in the United States and elsewhere, F.O.B. shipping points in Canada, pursuant to contracts performed by Cassiar wholly in Canada. Once the fibre is shipped, Cassiar has no control over, and does not participate in, the fibre's ultimate use, processing, or destination. Except in unusual, fortuitous circumstances, Cassiar has no knowledge of the identity or location of the companies who in turn purchase partially or fully-finished products containing Cassiar's fibre.

Apart from its sales to established United States customers in a limited number of states, Cassiar has not otherwise transacted any business in the United States. It has never registered to do business, owned any real or personal property, or maintained any place of business in any state. Cassiar has never had a marketing plan or

distribution system through which its fibre was sold in the United States, and has never sought to promote its product through advertising in the United States. With respect to those states to which it has not shipped fibre, Cassiar has had no contacts of any kind.

Beginning in 1983, Cassiar, together with numerous other defendants, has been named in products liability suits brought by school districts and other entities for property damage allegedly caused by the presence of asbestos-containing products in schools and other buildings. The defendants include not only manufacturers of asbestos products, but also asbestos mining companies such as Cassiar. The basis for the claims against the mining companies is that they supplied asbestos fibre that was one of the raw materials used to manufacture the finished products installed in the buildings, and that the miners breached a duty to warn the ultimate users of the finished products of the potential hazards of asbestos. The claims are not for personal injuries caused by asbestos, but rather for the cost of removing asbestos-containing products from the buildings.

Several of the suits against Cassiar have been brought in jurisdictions, such as Maryland, Michigan, Minnesota, Wisconsin, and the District of Columbia, where Cassiar has never made any sales or shipments of asbestos fibre, and hence has no connection with the forum. In those suits, the only basis for jurisdiction over Cassiar is the allegation that fibre mined by Cassiar is contained in the products at issue.²

² To date, none of the plaintiffs has offered evidence to show the presence of Cassiar fibre in these products. Moreover, the products involved are primarily asbestos-spray ceilings and pipe-and-boiler insulation, and Cassiar fibre normally was used for cement and textile products. While it is therefore unlikely that Cassiar fibre will be shown to be present in the products at issue, Cassiar nevertheless must remain in the massive litigation through pretrial proceedings, unless its jurisdictional defenses can be sustained.

In the present case, the California Supreme Court held that Asahi, a Japanese manufacturer of tire valve assemblies, was subject to jurisdiction in California solely because its valve assemblies were incorporated in tire tubes manufactured in Taiwan by one of Asahi's customers, Cheng Shin, and subsequently sold by Cheng Shin through an affiliated distributor in California. Pet. App. B-3, C-13.³ The California Supreme Court ruled that jurisdiction was proper because Asahi was "aware" that some of its customer's tire tubes "would end up throughout the United States and in California," Pet. App. at C-10 & n.4; no other contacts between Asahi and California were necessary. Pet. App. C-15.⁴

Like Asahi, Cassiar is "aware" that its customers seek to sell the finished products and component parts that they manufacture from Cassiar fibre and other raw materials wherever they are able to find buyers, and that both its U.S. and non-U.S. customers—and their customers in turn—may sell their products in the United States. Cassiar thus has an important interest in this case. This Court's decision may effectively determine whether Cassiar will be subject to jurisdiction in pending and future suits brought in states where it never sold asbestos fibre or had any other contact, but where the plaintiff alleges that the products at issue contain Cassiar fibre. In effect, the decision may determine whether there will remain any limits upon personal jurisdiction over suppliers of component parts or raw materials, such as Asahi and Cassiar, or whether such suppliers always will be subject to jurisdiction in every state where their cus-

³ "Pet. App." refers to the appendix to the petition for a writ of certiorari.

⁴ Although the suit began as a products liability action arising out of a motorcycle accident, the plaintiff has settled his claim. Thus, the issue presented relates only to California's jurisdiction over Cheng Shin's cross-complaint against Asahi. Pet. App. C-16 n.10.

tomers, or their customers' customers, ultimately sell finished products.

SUMMARY OF ARGUMENT

This Court has repeatedly affirmed that a fundamental prerequisite for personal jurisdiction over a nonresident defendant is that the defendant have "*purposefully established* 'minimum contacts' " with the forum state. *Burger King Corp. v. Rudzewicz*, 105 S. Ct. 2174, 2183 (1985) (emphasis added). The requirement that the contacts be "purposeful" protects the due process liberty interest at the root of limitations on personal jurisdiction.

The decision of the California Supreme Court in this case should be reversed, because it sustains jurisdiction over a nonresident corporation without any evidence of purposeful contacts with the forum. The contacts relied upon by the California court are essentially those which this Court ruled insufficient in *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980)—(1) foreseeability that the nonresident's product would end up in the forum state, and (2) substantial revenue from use of the product there. In effect, the California decision abandons all limitations upon personal jurisdiction over suppliers of component parts or raw materials, and ensures that such suppliers will be subject to jurisdiction in every state.

ARGUMENT

I. Due Process Requires That a Defendant Undertake Some Purposeful Activity Directed Toward the Forum State To Be Subject to Suit There.

Only last Term, this Court reaffirmed that the "constitutional touchstone" for personal jurisdiction over a nonresident defendant "remains whether the defendant *purposefully established* 'minimum contacts' in the forum State." *Burger King Corp. v. Rudzewicz*, 105 S. Ct. 2174, 2183 (1985) (emphasis added) (citing *International Shoe*

Co. v. Washington, 326 U.S. 310, 316 (1945)). That a defendant's contacts with the forum must be "purposeful" to justify jurisdiction is a recurrent theme in this Court's decisions. Thus, in *Hanson v. Denckla*, 357 U.S. 235, 253 (1958), this Court declared that, in order to sustain jurisdiction over a nonresident defendant, "it is essential in each case that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws." (Emphasis added.)

A corollary of the requirement that a defendant's "efforts [be] 'purposefully directed' toward residents of another State" is that jurisdiction may not be predicated solely upon the "'unilateral activity of another party or a third person'"; instead, "the defendant himself [must] create a 'substantial connection' with the forum State." *Burger King*, *supra*, 105 S. Ct. at 2183-84 (citations omitted) (emphasis in original). See also Currie, *The Growth of the Long Arm: Eight Years of Extended Jurisdiction in Illinois*, 1963 U. Ill. L.F. 533, 549 (the "essence" of the purposefulness requirement "is that the defendant must have taken voluntary action calculated to have an effect in the forum State"). The requirement of purposefulness also ensures that jurisdiction is not founded on contacts that are "random," "fortuitous," or "attenuated." *Burger King*, *supra*, 105 S. Ct. at 2183.

As this Court has recognized, the constitutional limits on personal jurisdiction arise out of the liberty interest protected by the due process clause. *Id.* at 2182 n.13; *Insurance Corp. of Ireland v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 702-03 & n.10 (1982).⁵ The

⁵ This Court has also recognized that limits on personal jurisdiction serve federalism by restricting the power of the individual states. *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 292 (1980). In recent decisions, however, this Court has emphasized that these limitations "must be seen as ultimately a function of the

requirement that a defendant's contacts with the forum must be purposeful, i.e., that the defendant himself must do something directed toward the forum, protects liberty interests in two ways. First, the purposefulness requirement protects the defendant from the inherent unfairness in being "subject to the binding judgments of a forum with which he has established no meaningful 'contacts, ties or relations.'" *Burger King*, *supra*, 105 S. Ct. at 2181-82 (citation omitted). See also Currie, *supra*, at 534 (limitations on personal jurisdiction protect defendant against "the unfairness * * * of being compelled to defend himself in a court of a State with which he has no relevant connection").

Second, the purposeful contacts standard "requir[es] that individuals have 'fair warning that a particular activity may subject [them] to the jurisdiction of a foreign sovereign.'" *Burger King*, *supra*, 105 S. Ct. at 2182 (quoting *Shaffer v. Heitner*, 433 U.S. 186, 218 (1977) (Stevens, J., concurring in the judgment)). By requiring that a "defendant's conduct and connection with the forum State" be such "that he should reasonably anticipate being haled into court there," the requirement of purposeful minimum contacts promotes liberty interests by "giv[ing] a degree of predictability to the legal system that allows potential defendants to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit." *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980). Where a nonresident has purposeful contacts with the forum state, "it has clear notice that it is subject to suit there, and can act to alleviate the risk of burdensome litigation by procuring insurance, passing the expected costs on to customers, or, if the

individual liberty interest preserved by the Due Process Clause' rather than as a function 'of federalism concerns.'" *Burger King Corp. v. Rudzewicz*, 105 S. Ct. 2174, 2182 n.13 (1985) (quoting *Insurance Corp. of Ireland v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 702-03 n.10 (1982)).

risks are too great, severing its connection with the State." *Id.*

Applying these principles in *World-Wide Volkswagen, supra*, this Court held that jurisdiction could not be imposed in Oklahoma over an automobile dealer and an importer that did business in the New York area solely because the car they sold caused injury in Oklahoma. This Court reasoned that the foreseeability that the car might cause injury in Oklahoma was not sufficient for jurisdiction: "foreseeability," i.e., "the mere likelihood that a product will find its way into the forum State," "has never been a sufficient benchmark for personal jurisdiction under the Due Process Clause." *Id.* at 295-97. Also insufficient was the fact that the dealer and importer earned "substantial revenue" from the use of cars in Oklahoma. *Id.* at 298-99. Jurisdiction was unwarranted, because the requirement of purposefulness was not met; there was no evidence that the defendants had made any "efforts * * * to serve, directly or indirectly, the market for [their] product in [Oklahoma]." *Id.* at 297.

As we show below, in this case, as in *World-Wide Volkswagen*, the defendant lacks the purposeful minimum contacts with the forum required for jurisdiction by the due process clause. The requirement of purposefulness is essential to jurisdiction, because it protects the liberty interest that is at the root of limitations on personal jurisdiction.

II. Because the Defendant Here Had No Purposeful Contacts with California, Jurisdiction May Not Be Imposed.

The California Supreme Court held Asahi subject to jurisdiction on the basis of two findings regarding its relations to California. First, tire valve assemblies manufactured by Asahi in Japan were incorporated into a "substantial" number of tire tubes manufactured by

Cheng Shin in Taiwan and ultimately sold to customers in California. Pet. App. C-10 to -11. Second, Asahi was "aware" that some of the valves it sold to Cheng Shin "would end up throughout the United States and in California." Pet. App. C-10 & n.4. The California court held that the "purposeful availment" requirement was met because Asahi, a components parts manufacturer, "intentionally [sold] its products to another manufacturer, knowing that the component parts [would] be incorporated into finished products sold in [California]." Pet. App. C-13.

Despite its recitation of the purposefulness requirement, the California decision essentially abandons this fundamental requirement for personal jurisdiction over a nonresident corporation. As set forth in Part I, the "essence" of the purposefulness requirement "is that the defendant must have taken voluntary action calculated to have an effect in the forum State." Currie, *supra*, at 549. No such "voluntary action" by Asahi towards California was identified, apart from the sale of tire valves to Cheng Shin. Thus, the "contacts" with California by Asahi relied on by the California Supreme Court were equivalent to those held insufficient in *World-Wide Volkswagen*. In both cases, the defendants' only contacts with the forum were the "foreseeability" that their products would end up in the state, coupled with "substantial revenue" from the use of the product there. *World-Wide Volkswagen, supra*, 444 U.S. at 295-99.

The California court attempted to distinguish *World-Wide Volkswagen* on the ground that there the product was merely *used* in Oklahoma, whereas, in the present case, the component part was sold in California as part of a finished product. Pet. App. at C-9 & n.3. The flaw in this distinction, however, is that both cases share an absence of any purposeful activity directed by the defendant toward the forum. In both cases, the product reached the forum state solely due to the unilateral activity of others—the defendants' customers. In each case,

the destination of the product, rather than the actions of the defendant, determined the forum, a result which *World-Wide Volkswagen* rejected. See 444 U.S. at 296 (if jurisdiction were sustained, "[e]very seller of chattels would in effect appoint the chattel his agent for service of process").

In upholding jurisdiction in this case, the California court placed substantial reliance on the dictum of *World-Wide Volkswagen* that "[t]he forum State does not exceed its powers under the Due Process Clause if it asserts personal jurisdiction over a corporation that delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum State." 444 U.S. at 297-98. The context of this statement makes clear, however, that jurisdiction over a nonresident corporation under a "stream of commerce" theory is proper only if the corporation has "'purposefully avail[ed] itself of the privilege of conducting activities within the forum State,'" so that "it has clear notice that it is subject to suit there." *Id.* at 297 (quoting *Hanson v. Denckla*, *supra*, 357 U.S. at 253).⁶

⁶ The California court also relied on *Gray v. American Radiator & Standard Sanitary Corp.*, 22 Ill. 2d 432, 176 N.E.2d 761 (1961), which this Court cited in *World-Wide Volkswagen*, *supra*, 444 U.S. at 298, in connection with the "stream of commerce" doctrine. Pet. App. C-8 to -9. *Gray* upheld jurisdiction over a nonresident component-parts manufacturer that made no direct sales to customers in the forum. 176 N.E.2d at 766-67. The jurisdictional theory adopted in *Gray*, however, is inconsistent with the reasoning of *World-Wide Volkswagen*. *Gray* held that jurisdiction was proper over any corporation that "sell[s] its products for ultimate use in [the forum] State." 176 N.E.2d at 766 (emphasis added). Under *World-Wide Volkswagen*, however, the foreseeable use of a product in the state is insufficient for jurisdiction, as the California Supreme Court appeared to recognize. Pet. App. C-8 n.2 ("It is doubtful that the mere expectation of use in the forum is sufficient to establish minimum contacts under *World-Wide Volkswagen*"). Thus, this Court's reference to *Gray* in *World-Wide Volkswagen* cannot be construed as giving unqualified approval to the broad "stream of commerce" doctrine expressed in *Gray*.

In short, to apply the "stream of commerce" theory consistently with the purposefulness requirement, as required by *World-Wide Volkswagen*, there must be evidence that the nonresident corporation has undertaken some voluntary "efforts * * * to serve, directly or indirectly, the market for its product" in the forum state. *Id.* at 297. This requirement is satisfied when the manufacturer of a finished product ships the product directly into the forum state, or distributes the product there through intermediaries acting in a defined chain of distribution. Indeed, a primary purpose of the stream of commerce theory is to prevent a manufacturer from insulating itself from jurisdiction "by using an intermediary or by professing ignorance of the ultimate destination of its products." *DeJames v. Magnificence Carriers, Inc.*, 654 F.2d 280, 285 (3d Cir. 1981). The purposefulness requirement might also be satisfied where a manufacturer designs a component part specifically for use in the customer's finished product, and thereby directs his efforts toward the customer's market.⁷ Similarly, marketing a product through an exclusive distributor with authority for sales in a certain geographic area,⁸ designing a product to meet the safety standards applicable in the

⁷ *E.g.*, *Rockwell Internat'l Corp. v. Costruzioni Aeronautiche Giovanni Agusta*, 553 F. Supp. 328, 330-32 (E.D. Pa. 1982) (jurisdiction proper over ball-bearing manufacturer in state where customer's helicopters were sold because manufacturer worked with customer to custom-design ball bearings and intended them to be "an inseparable part of the marketing plan" for the finished product).

⁸ *E.g.*, *Stabilisierungsfonds Fur Wein v. Kaiser Stuhl Wine Distribs.*, 647 F.2d 200, 203 (D.C. Cir. 1981) (foreign winery subject to jurisdiction in the District of Columbia, because it sold its wine to a New York importer "with exclusive authority to distribute the wine throughout the eastern part of the United States"); *Oswalt v. Scripto, Inc.*, 616 F.2d 191, 198 (5th Cir. 1980) (Japanese lighter manufacturer subject to jurisdiction in Texas, because it sold millions of lighters each year to exclusive U.S. distributor who serviced "national retail outlets," including several in Texas).

customer's markets,⁹ manufacturing a product specifically for sale at the customer's retail outlets,¹⁰ or taking part in promoting the customer's product¹¹ could justify assertion of jurisdiction. In such cases, asserting jurisdiction over the manufacturer based upon the customer's markets might be proper, because the manufacturer could be said to have "himself create[d] a 'substantial connection' with the forum." *Burger King, supra*, 105 S. Ct. at 2184 (emphasis in original).

The purposefulness requirement might also be satisfied where a manufacturer sells such a large percentage of its products to a customer that it essentially has adopted that customer's markets as its own. This point was implicitly recognized by the dissenting opinion below, which contended that Asahi received so little revenue from Cheng Shin's California market that Asahi could not have "intended to serve the California market indirectly." Pet. App. C-20.

Furthermore, if Asahi's tire valves were a finished product, rather than a component part, the distribution

⁹ *E.g., Volkswagenwerk, A.G. v. Klippan, GmbH*, 611 P.2d 498, 500-01 (Alas. 1980) (manufacturer of seat belt assembly subject to jurisdiction in Alaska, because cars containing assembly sold there and manufacturer designed its assembly to meet applicable safety standards, labeling the seat belt assembly as "approved for sale in all states").

¹⁰ *E.g., Noel v. S.S. Kresge Co.*, 669 F.2d 1150, 1152-53 (6th Cir. 1982) (pliers manufacturer subject to jurisdiction in state where K-Mart sold pliers, since manufacturer mounted pliers on cards which stated that pliers "had been manufactured in Korea for K-Mart").

¹¹ *E.g., Poyner v. Erma Werke GMBH*, 618 F.2d 1186, 1191 (6th Cir. 1980) (German gun manufacturer held subject to jurisdiction in Kentucky, because it had an exclusive U.S. distributor active in that state and also was "'a strong backstage promoter of its products throughout the United States'"); *United States v. Toyota Motor Corp.*, 561 F. Supp. 354, 359 (C.D. Cal. 1983) (jurisdiction proper over Japanese automobile manufacturer in state where distributor sold its cars and where manufacturer knew about and "actively promoted those sales").

chain might be sufficiently short that a court could reasonably conclude that Asahi was so closely tied to its customer's markets that it had "purposefully availed" itself of those markets. For example, in *Nelson v. Park Industries*, 717 F.2d 1120, 1126-27 (7th Cir. 1983), a Hong Kong manufacturer of shirts was held subject to jurisdiction in Wisconsin because it sold the shirts, through an importer, to Woolworth, a retailer with a "national retail market" that included Wisconsin. If, however, the nonresident defendant in *Nelson* instead had been a producer of the cotton or thread used in the shirts, rather than of the shirts themselves, it would have been too far removed from Woolworth's markets to have had any "purposeful" connection with them. Similarly, the connection between Asahi or Cassiar and the markets for their customers' finished products—in the absence of any further involvement by Asahi or Cassiar in those markets—is too attenuated to satisfy the purposefulness requirement essential for personal jurisdiction.¹²

¹² At times in its opinion, the California Supreme Court implies that Asahi knew of Cheng Shin's distribution system in the United States and of Asahi's own indirect business with California through that distribution system. *E.g.*, Pet. App. C-11 ("Asahi was aware of [Cheng Shin's] distribution system's operation, and it knew that it would benefit economically from the sale in California of products incorporating its components."). The evidence, however, on which the California court rested this finding of Asahi's knowledge—the declaration of a Cheng Shin manager that Asahi knew that the valves it sold to Cheng Shin "would end up throughout the United States and in California," Pet. App. C-10 n.4—is weak. At best, this declaration shows only that it was foreseeable to Asahi that some of its valves would end up in California, and does not show that Asahi "purposefully" used Cheng Shin's distribution system to indirectly market its products in California. Thus, if this Court should hold that knowledge concerning, and substantial sales through, a customer's distribution system is sufficient to impose jurisdiction over a manufacturer in a state included in that distribution system, it should require a greater evidentiary showing of knowledge than was presented in

A recent decision of the Fifth Circuit, *Bean Dredging Corp. v. Dredge Technology Corp.*, 744 F.2d 1081 (5th Cir. 1984), illustrates the way in which the purposefulness requirement is essentially abandoned when personal jurisdiction over a component part manufacturer is founded solely on the sale of a finished product containing the component, together with a general "awareness" that its customers might market finished products in the state. In *Bean Dredging*, a Washington manufacturer sold steel castings by mail to a customer's plant in California that made cylinders. The cylinders were eventually used as part of a dredge constructed by another company in Louisiana. The castings manufacturer had no contacts with Louisiana. At a deposition, however, the manufacturer's president indicated "an awareness" that its castings, "once they entered the stream of commerce, might go virtually anywhere." *Id.* at 1082. On these facts, the Fifth Circuit held that the due process requirements for personal jurisdiction were met, citing the "stream of commerce" language in *World-Wide Volkswagen*. 744 F.2d at 1083-85. As this result demonstrates, however, an extension of the "stream of commerce" theory to impose jurisdiction over every member of a distribution chain in every forum where the finished product is ultimately sold would in essence abandon any requirement of purposefulness, and allow jurisdiction where the defendant's contacts with the forum are, in every sense, attenuated.¹³

this case. *Cf. Montalbano v. Easco Hand Tools, Inc.*, 766 F.2d 737, 743 (2d Cir. 1985) (remanding for further development of the record concerning the defendant's knowledge of "the nature and extent of [its customer's] distribution system" before deciding whether defendant may be subject to jurisdiction in state served by that system).

¹³ Other courts have recognized, contrary to *Bean Dredging*, that to sustain jurisdiction over a nonresident manufacturer simply because a product was ultimately sold in the forum violates due process due to the absence of purposefulness. *E.g., Hutson v. Fehr*

Application of the stream of commerce theory to sustain jurisdiction in this case would thus undermine the due process interests in fairness and predictability that are served by the purposefulness requirement. Fairness would be sacrificed, because suppliers such as Cassiar and Asahi would be subject to the binding judgment of a state where they had no ties and had done nothing to involve themselves in the sale of their customers'—or

Bros., 584 F.2d 833, 837 (8th Cir. 1978) (en banc) (jurisdiction may not be imposed in Arkansas over nonresident defendant which repackaged a chain eventually sold in Arkansas because defendant "did not consciously solicit or purposefully avail itself of the privilege to conduct business in the forum state"); *Humble v. Toyota Motor Co.*, 578 F. Supp. 530, 532 (N.D. Iowa 1982), *aff'd*, 727 F.2d 709 (8th Cir. 1984) (no jurisdiction over component part manufacturer on ground that finished product was sold in state, because contacts between component part manufacturer and forum are "too fortuitous and tenuous"); *Shaw v. American Cyanamid Co.*, 534 F. Supp. 527, 531-33 (D. Conn. 1982) (jurisdiction may not be imposed over distributor of formaldehyde on ground that products containing formaldehyde were eventually sold in state, since formaldehyde was brought into state "solely because of the unilateral action of another party"); *Martinez v. American Standard*, 91 A.D.2d 652, 457 N.Y.S.2d 97, 98-99 (1982), *aff'd mem.*, 60 N.Y.2d 873, 458 N.E.2d 826 (1983) (manufacturer of terminal pins incorporated in compressor used in air conditioner not subject to jurisdiction in New York, because no evidence that terminal pin manufacturer knew where compressors "were destined" or that manufacturer "was attempting to reach a New York market"); *Phoenix Trimming, Inc. v. Mowday*, 431 So. 2d 198, 199-200, 202 (Fla. Dist. Ct. App. 1983) (jurisdiction may not be sustained over manufacturer of synthetic fiber used in hot air balloon which caused injury in Florida without evidence that manufacturer engaged in "continuous, systematic activity through others in an effort to serve the Florida market").

Similarly, two courts have ruled that, due to the absence of purposefulness, personal jurisdiction may not be asserted over Cassiar solely on the basis that products containing Cassiar fibre were alleged to be present in the state. *Weick v. Maremont Corp.*, No. 7-70553, slip op. at 5 (E.D. Mich. May 31, 1979); *Dunn v. Armstrong World Indus.*, No. 82-244-895 NP (Mich. Cir. Ct. April 15, 1983).

their customers' customers—products. Predictability also would be undermined, because such suppliers would lose control over where they were subject to suit, and instead could be sued wherever their customers decided to sell their own finished products. Indeed, the only predictability that would remain is that such suppliers might be subject to jurisdiction in every state in the nation, regardless whether they had undertaken any voluntary action in relation to the forum. See *Ford Motor Co. v. Atwood Vacuum Machine Co.*, 392 So. 2d 1305, 1314 (Fla. 1981) (Sundberg, C.J., dissenting).

In *World-Wide Volkswagen*, this Court stated that the due process limitations on personal jurisdiction serve to assure that a defendant "can act to alleviate the risk of burdensome litigation by procuring insurance, passing the expected costs on to customers, or, if the risks are too great, severing its connection with the State." 444 U.S. at 297. See also *Burger King*, *supra*, 105 S.Ct. at 2185 n.17. Although it echoed this language, Pet. App. C-6, the California Supreme Court's decision in this case effectively removes any ability by suppliers of raw materials or component parts to limit where they will be subject to jurisdiction. If any meaningful limits on personal jurisdiction are to remain, the decision of the California Supreme Court should be reversed.

CONCLUSION

For the reasons stated above and in the Brief for the Petitioner, *amicus* Cassiar urges the Court to reverse the decision below.

Respectfully submitted,

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No. 85-693

In the
Supreme Court of the United States

October Term, 1985

ASAHI METAL INDUSTRY CO., LTD.,
Petitioner,

v.

SUPERIOR COURT OF CALIFORNIA
IN AND FOR THE COUNTY OF SOLANO
(CHENG SHIN RUBBER INDUSTRIAL CO., LTD.,
REAL PARTY IN INTEREST)
Respondent.

On Writ of Certiorari to the
Supreme Court of the State of California

**BRIEF OF AMICUS CURIAE
CALIFORNIA MANUFACTURERS ASSOCIATION
IN SUPPORT OF RESPONDENT**

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QUESTION PRESENTED

Did California exceed its powers under the Due Process Clause when it asserted personal jurisdiction over a foreign corporation that delivered its product into the stream of commerce with the expectation that the product would be purchased by consumers in California, and the product subsequently injured California consumers?

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BRIEF OF AMICUS CURIAE
CALIFORNIA MANUFACTURERS ASSOCIATION
IN SUPPORT OF RESPONDENT

INTEREST OF AMICUS CURIAE

Amicus curiae submits this brief¹ in support of respondent, as it did before the Supreme Court of the State of California, in order that future courts do not place misguided reliance upon the precedential value of this Court's decisions regarding the jurisdiction state courts may exercise over foreign or alien parties.

¹Amicus has secured the written consent of the parties, pursuant to Rule 36.2, such consent being filed concurrently with this brief.

Since 1918, the California Manufacturers Association (CMA) has represented those manufacturers and processors doing business in California. Current membership represents approximately 70 percent of California's industrial workforce, and company sizes range from the smallest business to the largest, multi-national corporations in the world. Founded to represent its members before the judiciary and state executive and legislative branches of government, CMA has devoted its resources to the development of accurate assessments of the impact upon which judicial decisions, state legislation and regulatory actions will have upon its member companies; in furtherance of this goal, CMA takes a proactive role in informing appropriate governmental and/or private entities of the ramifications of proposed action. A non-profit organization dedicated to the improvement of the business climate generally, and in California particularly, CMA has also established a non-profit educational foundation -- California Manufacturers Research and Educational Foundation -- in order to augment its goal of providing accurate information and the "big picture" on issues of world-wide import.

The consequences of the decision below upon CMA members specifically, and business generally, includes an impact upon the overall environment of fairness, based upon the standards and framework provided in *World-Wide Volkswagen*.

The court's decision has protected the California consumer from duplicative and costly litigation which would otherwise be made necessary but for the granting of jurisdiction; and the manufacturer doing business in California, subjected to the

sword of myriad state laws, rules and regulations, should be entitled to seek a shield of protection from those same laws when faced with defending an action in court commenced as a result of the use of a faulty foreign or alien component.

A reversal of the California court's holding may jeopardize the lives, safety and health of California consumers, businesses and manufacturers, by providing another barrier which increases the difficulty an individual or company presently confronts when seeking a legitimate and lawful solution to the assignment of responsibility. Further, if alien or foreign manufacturers, which depend upon the California consumer marketplace to purchase the product within which its component has been integrated, may now escape assignment of responsibility within the state of the injured consumer or manufacturer doing business in the state, the foreign manufacturers will have absolutely no incentive to produce a product meeting the standards which our Congress and individual state legislatures have deemed appropriate for the protection of the citizenry of the United States. Such a reversal could be devastating to the manufacturers represented by CMA, as well as to the consumers who purchase their products.

Amicus believes the impact of a decision adverse to that of the California court will have implication worldwide, that a global view of the actual ramifications have not yet been adequately addressed, and that the information and argument contained herein may be of assistance to this Court in reaching its decision.

ARGUMENT

I

PETITIONER'S PRESENCE IN THE FORUM STATE CONSTITUTED SYSTEMATIC AND CONTINUOUS ACTIVITY WHICH INVOKED THE BENEFITS AND PROTECTION OF THE LAWS OF THE FORUM STATE AND GAVE RISE TO THE ACTIVITY SUED ON, AND WAS, THEREFORE, SUFFICIENT TO SATISFY THE DEMANDS OF DUE PROCESS.

The focus of the Court's opinion in the case of *International Shoe* was the definition of "presence" in the context of judgments rendered *in personam*. The Court stated "... due process requires only that in order to subject a defendant to a judgment *in personam*, if he be not present within the territory of the forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice'." *International Shoe Co. v. Washington*, 326 U.S. 310, 316 [66 S.Ct. 154, 90 L.Ed. 95] (1945) ("*International Shoe*") quoting *Miliken v. Meyer*, 311 U.S. 457, 463 [61 S.Ct. 339, 85 L.Ed. 278] (1940). (Emphasis added.) Referring to the terms "present" and "presence" as symbolic of the fictive corporate personality, and as determinants of the activities of the corporation within a forum sufficient to satisfy the demands of due process, this Court created a spectrum of corporate activities which would define the boundaries of "presence" sufficient to render a corporation liable to suit. *International Shoe, supra*, 326 U.S. at p. 317. This Court envisioned the spectrum of corporate presence as ranging from the commission of some single or occasional act sufficient to impose a corporate liability, but not sufficient to confer state

authority to enforce such liability, to corporate operations of such a substantial nature as to justify suit against it on causes of action arising from dealings entirely distinct from those activities. *Id.*, at p. 317. Within these spectral demarcations, the Court asserted that "Presence" in the state in this sense has never been doubted when the activities of the corporation there have not only been continuous and systematic, but also give rise to the liabilities sued on, even though no consent to be sued or authorization to an agent to accept service of process has been given. *Id.*, at p. 318. The Court further contemplated that some acts, "... because of their nature and quality and the circumstances of their commission, may be deemed sufficient to render the corporation liable to suit." *Id.*, at p. 318.

The Court concluded that the criteria for determining whether a corporation's "presence" was sufficient for Due Process purposes could be neither mechanical nor quantitative, but would depend rather on the "quality and nature of the activity in relation to the fair and orderly administration of the laws. . . ." *International Shoe, supra*, 326 U.S. at p. 319. Thus, if the quality and nature of a corporation's activities are within the "spectrum of presence" as defined by the Court, the corporation "enjoys the benefits and protection of the laws of that state. . . [which] may give rise to obligations; and so far as those obligations arise out of or are connected with the activities within the state, a procedure which requires the corporation to respond to a suit brought to enforce them can, in most instances, hardly be said to be undue." *Id.*, at p. 319.

Amicus suggests that where, as here, a component manufacturer has for ten years delivered its product into the stream of commerce with the expectation that its product, as incorporated into a finished product, will be purchased in the forum state of California, California has not exceeded its powers under the Due Process Clause by asserting personal jurisdiction over petitioner. See *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 298, [100 S.Ct. 559, 622 L.Ed. 2d 490] (1980) ("*World-Wide Volkswagen*").

Petitioner, Asahi Metal Industry Co., Ltd. ("Asahi") is a major manufacturer of valve assemblies. Its product is incorporated into tubes sold throughout the world, including tubes sold to the large motorcycle manufacturers. For ten years, Asahi has done business with Respondent, Cheng Shin Rubber Industrial Co., Ltd. ("Cheng Shin"), a tube manufacturer that makes twenty percent of its United States sales in California. Between 1978 and 1982, Asahi sold 1,350,000 valve assemblies to Cheng Shin. *Asahi Metal Industry Co., Ltd. v. Superior Court* 39 Cal.3d 35 [216 Cal.Rptr. 385, 386, 387] (1985) ("*Asahi Metal Industry Co., Ltd.*"). Moreover, Asahi knew that Cheng Shin incorporated Asahi's valve assemblies into tubes subsequently marketed and sold in the United States and California. *Asahi Metal Industry Co., Ltd., supra*, 216 Cal.Rptr. at pp. 391, 392.²

²Petitioner's assertion that the resolution of the issue in this case should be based on contract rather than product liability considerations is without merit. The cause of action underlying the issue of personal jurisdiction was brought as a result of one death and severe injuries in the forum State sustained in an

Application of the standard for determining corporate "presence" as enunciated in *International Shoe* indicates that Asahi's sale of valve assemblies to Cheng Shin for a period of ten years with knowledge that the valve assemblies would be purchased in California, constituted systematic and continuous activity, which activity not only invoked the benefits and protection of the laws of California, but gave rise to the activity here sued on; therefore, Asahi's presence in the forum state is sufficient to satisfy the demands of due process.

II

PETITIONER'S SALE OF ITS PRODUCT IN CIRCUMSTANCES SUCH THAT IT KNEW THE PRODUCT WOULD BE RESOLD IN THE FORUM STATE CONSTITUTES PURPOSEFUL AVAILMENT OF THE BENEFITS AND PROTECTION OF THE LAWS OF THE FORUM STATE.

The case at bench raises the issue of personal jurisdiction in a cause of action predicated on product liability. It is appropriate to consider here the opinion of the California Supreme Court in

(footnote continued from page 3)

accident allegedly caused by a defective valve assembly manufactured by petitioner. Any concomitant contractual obligations as between petitioner and respondent are of little effect in determining the issue at bench. Petitioner's relationship with the forum State, albeit indirect, is predicated on systematic and continuous economic activity. "Hence, if the sale of a product of a manufacturer or distributor . . . is not simply an isolated occurrence, but arises from the efforts of the manufacturer or distributor to serve *directly or indirectly*, the market for its product in other states, it is not unreasonable to subject it to jurisdiction in one of those states its allegedly defective product has there been the source of injury to its owner or to others." *World-Wide Volkswagen, supra*, 444 U.S. at p. 567. (Emphasis added.)

Buckeye Boiler Co. v. Superior Court, 71 Cal.2d 893 [80 Cal.Rptr. 113, 348 P.2d 57] (1969), for its discussion of the standard (first delineated in *International Shoe, supra*, 326 U.S. at p. 319, and reiterated in *Hanson v. Denckla*, 357 U.S. 235, 253 [78 S.Ct. 1228, 2 L.Ed. 2d 1283] (1958)) that the "presence" of a defendant in a forum state will depend on the quality and nature of the defendant's activity within the forum state as this standard specifically operates in the products liability context. Particularly, the California Supreme Court opinion analyzed the statement in *Hanson* that "there must be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum state, thus invoking the benefits and protections of its laws." *Buckeye Boiler Co. v. Superior Court, supra*, 71 Cal.2d at p. 898, quoting *Hanson v. Denckla, supra*, 357 U.S. 251, 253. Although the requirement of purposeful availment does no more than re-state the *International Shoe* definition of "presence" as discussed above, apparently the *Hanson* statement has been read as imposing an additional threshold which must be crossed in order to impose personal jurisdiction.

The Court reasoned that the *Hanson* requirement of purposeful activity within the forum state "is designed to demonstrate that the defendant has invoked [the] benefits and protection and is *therefore* amenable to jurisdiction in at least some cases. *Buckeye Boiler Co. v. Superior Court, supra*, 17 Cal.2d at pp. 902, 903, quoting *Hanson v. Denckla, supra*, 357 U.S. 235, 253. Having recognized that an enterprise "obtain[s] the benefits and protections of [California's] laws", if, as a

matter of *commercial actuality*, [it] has engaged in economic activity within [California] . . ." (*Buckeye Boiler Co. v. Superior Court*, *supra*, 17 Cal.2d at p. 901, quoting *Empire Steel Corp. v. Superior Court*, 56 Cal.2d 823, 834 [17 Cal.Rptr. 150, 366 P.2d 502] (1953)) (italics added by the Court), the Court equated engaging in economic activity "as a matter of commercial actuality" with the act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum state. *Buckeye Boiler Co. v. Superior Court*, *supra*, 17 Cal.2d at p. 901. Perhaps foreshadowing the opinion of this Court in *World-Wide Volkswagen*, the California Supreme Court cited *Gray v. American Radiator & Standard Sanitary Corp.*, 22 Ill.2d 432 [176 N.E.2d 761, 766] (1961), for the proposition that, although indirect, the benefits (and protection) derived from the laws of a forum state by a non-resident manufacturer are nevertheless essential to the conduct of business; thus, "if the manufacturer sells its products in circumstances such that it knows or should reasonably anticipate that they will ultimately be resold in a particular state, it should be held to have purposefully availed itself of the market for its product in that state." *Buckeye Boiler Co. v. Superior Court*, *supra*, 71 Cal.2d at p. 902.

Harking back to the admonition in *International Shoe* that determination of the criteria for determining "presence" can be neither mechanical nor quantitative (*International Shoe*, *supra*, 326 U.S. at p. 319), the Court in *Buckeye Boiler Co. v. Superior Court* explicitly disapproved a mechanical approach to determining the existence of purposeful activity inasmuch as a mechanistic approach fails to focus on economic reality. *Buckeye*

Boiler Co. v. Superior Court, supra, 71 Cal.2d at p. 903. (Eg., does defendant have office, property, agent, employees, jobber, distributor, manufacturer's agent or other representative; is there solicitation or advertising; or was the sale made in California. *Buckeye Boiler Co. v. Superior Court, supra*, at p. 903.) The Court would rather approach the existence of purposeful activity by a determination that the "manufacturer [has] engage[d] in economic activity within the forum as a matter of 'commercial actuality' whenever the purchase or use of its product within the state generates gross income for the manufacturer and is not so fortuitous or unforeseeable as to negative the existence of an intent on the manufacturer's part to bring about this result." *Buckeye Boiler Co. v. Superior Court, supra*, at p. 902.

Amicus suggests that the opinion in *Buckeye* comports with the standards set forth in *International Shoe* for determining whether a manufacturer's "presence" is sufficient to support *in personam* jurisdiction. The nature and quality of the activities of a manufacturer which engages in economic activity in a forum state as a matter of "commercial actuality" are such that the benefits invoked generate concomitant burdens when the product from which economic benefit is derived causes injury in the forum state. Thus, in the present case, petitioner has engaged in economic activity and derived gross income from the purchase in California of petitioner's product; moreover, the purchase of petitioner's product in California was neither fortuitous nor unforeseeable. Therefore, petitioner has, as a matter of "commercial actuality" purposefully availed itself of the benefit of

the laws of California and is therefore amenable *in personam* to the jurisdiction of California.

III

PETITIONER'S ACTIVITY IN THE FORUM STATE GAVE RISE TO THE CAUSE OF ACTION IN THE FORUM STATE; THEREFORE, NEITHER IS PETITIONER UNDULY BURDENED IN RESPONDING TO SUIT IN THE FORUM STATE, NOR IS THE FORUM STATE OVER-REACHING ITS SOVEREIGN POWER TO TRY THE CAUSE IN ITS COURTS.

This Court had occasion to address the sufficiency of "presence" to establish *in personam* jurisdiction in a product liability context in *World-Wide Volkswagen*. Notwithstanding the fact that the petitioners in *World-Wide Volkswagen* were late on the chain of manufacture and distribution, this Court's analysis is pertinent to certain elements of the case at bench.

In re-affirming the "minimum contacts" criteria requisite to the exercise of personal jurisdiction over a non-resident defendant, this Court recognized, as did the Court in *International Shoe*, that inconvenience to the defendant of litigating in a distant forum and restraint on the States to ensure their status as coequal sovereigns are relevant to the determination of whether "the quality and nature of the activity in relation to the fair and orderly administration of the laws" satisfies the demands of due process. *World-Wide Volkswagen, supra*, 444 U.S. at p. 292. (See also *International Shoe, supra*, 326 U.S. at pp. 317, 319: "... the casual presence of the corporate agent or even his conduct of single or isolated items of activities in a state in the corporations

behalf are not enough to subject it to suit on *causes of action unconnected with the activity* there. To require the corporation *in such circumstances* to defend the suit away from its home or other jurisdiction where it carries on more substantial activities has been thought to lay too great and unreasonable a burden on the corporation to comport with due process. . . . [To] the extent that a corporation exercises the privilege of conducting activities within a state, it enjoys the benefits and protection of the laws of that state. The exercise of that privilege may give rise to obligations; and, so far as those obligations arise out of or are connected with the activities within the state, a procedure which requires the corporation to respond to a suit brought to enforce them can, in most instances, hardly be said to be undue.")

Amicus suggests that when the threshold question of whether the activity of a non-resident corporation in a forum is sufficient to establish "presence" is answered affirmatively, neither is the non-resident corporation unduly burdened in responding to suit in that forum, nor is the state over-reaching its sovereign power to try the cause in its courts. Therefore, where, as here, the non-resident corporation has with knowledge continuously and systematically injected its product into the market of a forum state, thus establishing minimum contacts with the forum, the non-resident corporation must respond to obligations incurred when its product causes injury in that forum, and the state is justified in its assertion of personal jurisdiction in the cause arising out of such forum-related activity.

A.

PETITIONER'S SALE OF ITS PRODUCT WAS PURPOSEFULLY DIRECTED TOWARD RESIDENTS OF THE FORUM STATE; THEREFORE, PETITIONER MAY NOT ASSERT AN ABSENCE OF PHYSICAL CONTACTS TO DEFEAT JURISDICTION.

This Court in *World-Wide Volkswagen* noted that the relaxation of the limits imposed on state jurisdiction was "largely attributable to a fundamental transformation in the national economy." 444 U.S. at p. 293. The global economy has concurrently experienced a radical transformation, to which the description cited by this Court in *World-Wide Volkswagen* is equally apposite (Amicus takes literary license in the following quotation):

Today many commercial transactions touch two or more [nations] and may involve parties [located on separate] continent[s]. With this increasing [inter]nationalization of commerce has come a great increase in the amount of business conducted by mail [and telecommunications] across [national] lines. At the same time modern transportation and communication have made it much less burdensome for a party sued to defend himself in a state in which he engages in economic activity.

McGee v. International Life Ins. Co., 355 U.S. 220, 223 [78 S.Ct. 199, 2 L.Ed 2d 223] (1957). Again referencing the need for increased jurisdiction as a corollary of the increased flow of commerce consequent to technological progress, this Court cited *Hanson v. Denckla* for its caution that the trend relaxing the limits on state jurisdiction does not herald "the demise of all restrictions on the personal jurisdiction of state courts." *World-Wide*

Volkswagen, supra, 444 U.S. at p. 294 quoting *Hanson v. Denckla, supra*, 357 U.S. at pp. 250-251. In this context, this Court re-affirmed the "minimum contacts" standard of *International Shoe* as a measure of the guarantee of Due Process: "... [A] state may [not] make binding a judgment in personam against an individual or corporate defendant with which the state has no contact, ties or relations." *World-Wide Volkswagen, supra*, 444 U.S. at p. 294, quoting *International Shoe, supra*, 326 U.S. at p. 319.

This Court has recognized that, with the advent of high technology, the "minimum contacts" standard may no longer depend on the *physical* "presence" of corporate agents to conclude that the nature and quality of the activity is sufficient for Due Process purposes. Advanced telecommunications and computer devices and an extensive global system of marketing and distribution of component and finished products permit manufacturers to introduce their products into a global stream of commerce without the necessity of establishing a traditional presence in every forum in which the product will be purchased or used.

Hence, if the sale of a product of a manufacturer or distributor . . . is not simply an isolated occurrence, but arises from the efforts of the manufacturer or distributor to serve directly or indirectly, the market for its product in other states, it is not unreasonable to subject it to suit in one of those States if it's allegedly defective merchandise has there been the source of injury to its owner or others.

World-Wide Volkswagen, supra, 444 U.S. at p. 297. (Emphasis added.) This Court in *International Shoe* provided the rationale upon which corporate "presence" is predicated for Due Process purposes. Stipulating that the fictional nature of a corporation is intended to be acted upon as though it were a fact, the Court concluded that "the terms 'present' or 'presence' are used merely to symbolize those activities of the corporation's agent within the state which the courts will deem to be sufficient to satisfy the demands of due process." *International Shoe, supra*, 326 U.S. at pp. 316, 317, citing L. Hand, J., in *Hutchinson v. Chase & Gilbert*, 2 Cir., 45 F.2d 139, 141. The argument may be made that the reference to the activities of the Corporation's agent would require the traditional physical "presence" of a corporate agent to satisfy Due Process demands. Such an argument, while perhaps appropriate to the economic realities of 1945, would reveal an utter lack of comprehension of the economic realities existing some forty years after *International Shoe*. (See "Appendix" *infra*, at pp. A-1, *et seq.*) "Jurisdiction in these circumstances may not be avoided merely because the defendant did not physically enter the forum state. . . [It] is an inescapable fact of modern *commercial* life that a substantial amount of business is transacted solely by mail and wire communication across state lines, thus obviating the need for physical presence within a State in which business is conducted. So long as a commercial actor's efforts are 'purposefully directed' toward residents of another State, we have consistently rejected the notion that an absence of physical contacts can

defeat personal jurisdiction. (Citations omitted.)" *Burger King Corporation v. Rudzewicz*, 105 S.Ct. 2174, 2184 (1985).

As the facts of this case exemplify, the circumstance in which a manufacturer in one nation provides a component part to a manufacturer in another nation for incorporation into a finished product, and delivery to a third nation, contains no element of speculation. In this context the "presence" of the product in a forum is equivalent to the "presence" of the corporate agent. If the fictional nature of a corporation is intended to be acted upon as though it were a fact, undeniably, the factual "presence" of a manufacturer's product, whether a component part or a finished product, is no less representative of the corporate personality than the factual "presence" of a corporate agent. Moreover, the factual "presence" of the product in a forum may give rise to obligations upon which the corporation may be sued no less than the activities of the corporate agent in a forum may give rise to corporate liabilities. To assert a lack of personal jurisdiction based upon the absence of a corporate agent in a forum is to disregard the admonition that "... the criteria by which we mark the boundary line between those activities which justify the subjection of a corporation to suit, and those which do not, cannot be simply mechanical nor quantitative." *International Shoe, supra*, 326 U.S. at p. 319.

B.

THE NATURE AND QUALITY OF PETITIONER'S
ACTIVITY IN THE FORUM STATE IN RELATION TO THE
FAIR AND ORDERLY ADMINISTRATION OF THE LAWS
OF THE FORUM STATE WAS SUCH THAT PETITIONER

COULD REASONABLY ANTICIPATE BEING HALED INTO COURT IN THE FORUM STATE.

In *World-Wide Volkswagen*, this Court was confronted with a product liability action in which petitioner's contact with the forum state was "foreseeable" in terms of the intended use of the product; nevertheless, the majority described petitioner's conduct as an isolated fortuitous circumstance. *World-Wide Volkswagen, supra*, 444 U.S. at p. 295. As Justice Marshall acknowledged in his dissent, reasonable minds might differ as to whether the "presence" of petitioner's product in the forum was sufficient to satisfy the requirements of *International Shoe*. *World-Wide Volkswagen, supra*, 444 U.S. at p. 298, dis. opn. of Marshall, J. In that case, petitioner's activity, as viewed in the spectrum of "presence" established in *International Shoe* (see *International Shoe, supra*, 326 U.S. at pp. 317, 318), might be construed as either a single or occasional act which, because of its nature and quality is deemed sufficient to render the corporation liable to suit, or, alternatively, as an occasional act sufficient to impose liability but not thought to confer upon the state authority to enforce the liability. *Ibid*. In the case at bench, however, the "presence" of petitioner's product in the forum state was neither a single or occasional act nor isolated and fortuitous. The "presence" of petitioner's product in the forum was the result of continuous and systematic activity which gave rise to the liability sued on. In the present case, therefore, petitioner's conduct and connection with the forum state, as viewed in the *International Shoe* spectrum of "presence," cannot be doubted.

The "foreseeability" analysis posited in *World-Wide Volkswagen* (. . . "the foreseeability that is critical to due process analysis is . . . that the defendant's conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there... " [444 U.S. at p. 297]) explicitly referred to the *International Shoe* premise that "the nature and quality of the activity in relation to the fair and orderly administration of the laws" (*International Shoe, supra*, 326 U.S. at p. 319) shall determine the sufficiency of Due Process. Thus, where the nature and quality of the activity is such that a non-resident corporation systematically and continuously delivers its product into a forum market, directly or indirectly, with knowledge that the product will be present in the forum state, and the presence of the product in the forum gives rise to the action sued on, the requirements of "foreseeability" as to the manufacturer have been met.

C.

PETITIONER PURPOSEFULLY AVAILED ITSELF OF THE BENEFITS AND PROTECTION OF THE LAWS OF THE FORUM STATE WHEN IT DELIVERED ITS PRODUCT INTO THE STREAM OF COMMERCE WITH THE EXPECTATION THAT THE PRODUCT WOULD BE PURCHASED BY CONSUMERS IN THE FORUM STATE.

This Court in *World-Wide Volkswagen* approached the concept of "purposeful availment" in the context of asserting jurisdiction over a non-resident manufacturer or distributor, and concluded ". . . [I]f its allegedly defective merchandise has there been the source of injury to its owner or to others [, the] forum

State does not exceed its powers under the Due Process Clause if it asserts personal jurisdiction over a corporation that delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum State." *World-Wide Volkswagen, supra*, 444 U.S. at pp. 297, 298, citing *Gray v. American Radiator & Standard Sanitary Corp.*, 22 Ill.2d 432, 176 N.E.2d 761 (1961).

Examination of this proposition within the spectrum of "presence" formulated in *International Shoe* places the nature and quality of the activity well within the demarcation sufficient to satisfy Due Process. "Presence in the state. . . has never been doubted when the activities of the corporation there have not only been systematic and continuous, but also give rise to the liabilities sued on. . ." *International Shoe, supra*, 326 U.S. at p. 317. Where the corporate personality has manifested its "presence" in the form of a product delivered into the stream of commerce with expectation of purchase in a forum, the correlative corporate "presence" is evident.

Further support for finding corporate "presence" in the commercial sphere is provided by Justice Marshall. "Manifestly, the 'quality and nature' of commercial activity is different for purposes of the *International Shoe* test from actions from which a defendant obtains no economic advantage. Commercial activity is more likely to cause effects in a larger sphere, and the actor derives an economic benefit that makes it fair to require him to answer for his conduct where its effects are felt. The profits may be used to pay the costs of the suit, and knowing that the activity is likely to have effects in other States the defendant can readily

insure against the costs of those effects, thereby sparing himself much of the inconvenience of defending in a distant forum." *World-Wide Volkswagen, supra*, 444 U.S. at p. 316, dis. opn. of Marshall, J. Amicus submits that this statement is equally applicable to products, whether component or finished, which originate in forums without our national boundaries. If the States have permitted foreign manufacturers to enter the forum market, those manufacturers must be held to the same standards of responsibility for their product as a domestic manufacturer. Given the global nature of the economy, it defies logic to permit a manufacturer to escape liability engendered by its defective product on the basis of national boundaries.

D.

WHERE PETITIONER, A COMPONENT PART MANUFACTURER, RELIED ON THE PURCHASE BY ANOTHER PARTY FOR INCORPORATION AND DISTRIBUTION OF PETITIONER'S PRODUCT AS A FINISHED PRODUCT, THE INCORPORATION AND DISTRIBUTION OF THE FINISHED PRODUCT DOES NOT CONSTITUTE UNILATERAL ACTIVITY.

In *World-Wide Volkswagen*, this Court noted the absence of evidence that petitioner's activity occurred outside a specified geographical area. Further, this Court stated that although it was foreseeable that in the course of its intended use, an automobile would be taken outside the forum of purchase, "...the mere 'unilateral activity of those who claim some relationship with a non-resident defendant cannot satisfy the requirement of contact with the forum state'." *World-Wide Volkswagen, supra*, 444

U.S. 298, quoting *Hanson v. Denckla*, *supra*, 357 U.S. at p. 253. The passage quoted continues: "The application of that rule will vary with the quality and nature of the defendant's activity, but it is essential in each case that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum state, thus invoking the benefits and protections of its laws." *Hanson v. Denckla*, *supra*, 357 U.S. at p. 253, citing *International Shoe*, *supra*, 326 U.S. at p. 319. The Court in *Hanson* explicitly referred to "unilateral activity" relative to whether the nature and quality of the activity constitutes sufficient "presence." The Court had previously explained that the cause of action at bench did not arise out of an act done or a transaction consummated in the forum State. *Hanson v. Denckla*, *supra*, 357 U.S. at p. 252. Thus, it is not difficult to characterize the case in *Hanson v. Denckla* as lying beyond the spectrum of "presence" envisioned in *International Shoe*. To the contrary, the facts of the present case show that the nature and quality of the activity of petitioner were such to invoke the benefits and protections of the laws of California. In *Kulko v. Superior Court*, this Court determined that the "unilateral activity" of "sending a child to California to live with her mother is not a commercial act and connotes no intent to obtain or expectancy of receiving a corresponding benefit in the State that would make fair the assertion of that State's judicial jurisdiction." *Kulko v. Superior Court*, 436 U.S. 84 (1978).

The Court differentiated the question of jurisdiction in a domestic context and a commercial setting and explained that the extension of *in personam* jurisdiction was attributable to

nationalization of commerce and concurrent technological developments contributing to a reduction of the burden of defense in a forum in which economic activity occurs. *Kulko v. Superior Court, supra*, 436 U.S. at p. 101, citing *McGee v. International Life Ins. Co., supra*, 355 U.S. at pp. 222-223. Respondent's purchase of 1,350,000 valve assemblies from petitioner, for incorporation into respondent's finished product and ultimate purchase in a variety of international markets may hardly be termed "unilateral activity" on the part of respondent. Petitioner relies, as do other manufacturers of component products, on the activity of those who incorporate the component and distribute the finished product for purchase. Only spurious logic could conclude that the activity of the respondent in this circumstance comprises "unilateral activity."

In *Burger King Corporation v. Rudzewicz*, this Court expressly re-affirmed its statement in *World-Wide Volkswagen* that "...[t]he forum state does not exceed its powers under the Due Process Clause if it asserts personal jurisdiction over a corporation that delivers its product into the stream of commerce with the expectation that they will be purchased by consumers in the forum State and these products subsequently injure forum consumers." *Burger King Corporation v. Rudzewicz, supra*, 105 S.Ct. at p. 2185, quoting *World-Wide Volkswagen, supra*, 444 U.S. at pp. 297-298. Amicus submits that petitioner in the case at bench has delivered 1,350,000 valve assemblies into the stream of commerce with the expectation that consumers in California would purchase its product. Moreover, petitioner's product allegedly injured one forum consumer and caused the

death of another forum consumer. Conclusively, California has not exceeded its powers under the Due Process Clause by asserting personal jurisdiction over petitioner.

IV.

PETITIONER HAS NOT PRESENTED COMPELLING CASE THAT SOME OTHER CONSIDERATION WOULD RENDER JURISDICTION UNREASONABLE, AND THE INTERESTS OF THE FORUM STATE AND RESPONDENT OUTWEIGH ANY CONTENTION OF INCONVENIENCE TO PETITIONER OF DEFENSE IN THE FORUM STATE; THEREFORE, FAIR PLAY AND SUBSTANTIAL JUSTICE ARE SERVED BY EXERCISE OF JURISDICTION.

Amicus believes that the evidence shows petitioner has purposefully established minimum contacts within the forum State of California predicated on application of the "stream of commerce" theory described in *World-Wide Volkswagen*. *World-Wide Volkswagen*, *supra*, 444 U.S. at pp. 297-298. However, according to this Court, "... these contacts *may* be considered in light of other factors to determine whether the assertion of personal jurisdiction would comport with 'fair play and substantial justice'." *Burger King Corporation v. Rudzewicz*, *supra*, 105 S.Ct. at p. 2184, quoting *International Shoe*, *supra*, 326 U.S. at p. 320. (Emphasis added.) Five factors *may* be evaluated in "appropriate cases" to determine whether fair play and substantial justice are served in asserting personal jurisdiction. *Burger King Corporation v. Rudzewicz*, *supra*, 105 S.Ct. at p. 2184. (Emphasis added.) Amicus would draw attention to the language which indicates that this additional analysis is permissive rather than mandatory. Amicus

further asserts that, where the stream of commerce theory provides the predicate for personal jurisdiction, and the presence of the manufacturer's product in the forum in which injury occurs is neither isolated nor fortuitous, fair play and substantial justice are presumptively served when personal jurisdiction is imposed upon the product manufacturer. This contention is supported by the rationale proposed by Justice Marshall relative to activity in the commercial sphere which provides economic benefit from the activity that makes it fair to require [the manufacturer] to answer for his conduct where its effects are felt. *World-Wide Volkswagen, supra*, 444 U.S. at p. 317, dis. opn., Marshall, J.

If the first factor to be evaluated is "the burden on the defendant" (*Burger King Corporation v. Rudzewicz, supra*, 105 S.Ct. at p. 2184, quoting *World-Wide Volkswagen, supra*, 444 U.S. at p. 292), and the product manufacturer has purposefully derived benefit from the market for its product in the forum, "... the Due Process Clause may not be wielded as a territorial shield to avoid interstate obligations. . ." *Burger King Corporation v. Rudzewicz, supra*, 105 S.Ct. 2183. Moreover, the technological developments which have afforded manufacturers access to global markets have diminished the burden of defense in a forum from which economic benefit has been extracted by the manufacturer. Therefore, where minimum contacts have been founded on the manufacturer's activity in the stream of commerce, any consideration of burden on the manufacturer should be accorded minimal weight, if any, in balancing the five factors relative to fair play and substantial justice.

In the present case, petitioner contends, without supporting evidence, that it would be inconvenienced by California's assertion of personal jurisdiction. *Asahi Metal Industry Co., Ltd., supra*, 39 Cal.3d at p. 37. "Where a defendant who purposefully has directed his activities at forum residents seeks to assert jurisdiction, he must present a *compelling case* that some other consideration would render jurisdiction unreasonable." *Burger King Corporation v. Rudzewicz, supra*, 105 S.Ct. at p. 2185. (Emphasis added.) Petitioner has failed to present the requisite compelling evidence; therefore, in view of the fact that the remaining factors weigh in favor of California's assertion of personal jurisdiction, substantial justice and fair play are served by holding petitioner to answer for its allegedly defective product in California's courts. As to "the forum States' interest in adjudicating the dispute" (*World-Wide Volkswagen, supra*, 444 U.S. at p. 292), California has an interest in adjudicating an indemnity dispute between two foreign manufacturers. The fact that one party seeking indemnity or contribution is a foreign corporation rather than an original injured plaintiff, is not adequate justification for immunizing a party potentially liable under the laws of the forum where the injury occurred. *Asahi Metal Industry Co., Ltd., supra*, 39 Cal.3d at p. 39. Moreover, California has an interest in the orderly administration of its laws, including assuming jurisdiction where, as here, most of the evidence, testimonial and otherwise, is within the forum where injury occurred. *Asahi Metal Industry Co., Ltd., supra*, at p. 39.

As to the "plaintiff's interest in obtaining convenient and effective relief" (*World-Wide Volkswagen, supra*, at p. 292), respondent here has named numerous defendants, including petitioner, in its cross-complaint. *Asahi Metal Industry Co., Ltd., supra*, 39 Cal.3d at p. 39. Thus, both respondent and the forum have an interest in precluding the possibility of inconsistent verdicts and multiple adjudications in this action. "[T]he interstate judicial system interest in obtaining the most efficient resolution of controversies" (*World-Wide Volkswagen, supra*, 444 U.S. at p. 292) does not appear to be implicated in the case at bench. However, the "shared interest of the several States in furthering substantive social policies" (*World-Wide Volkswagen, supra*, 444 U.S. at p. 292) will be seriously hampered in application of the social policies underlying product liability law should this Court determine that a component part manufacturer is immune to assertion of personal jurisdiction in a forum where the purposeful "presence" of its product caused injury. Petitioner has not presented a compelling case that jurisdiction is unreasonable. The interests of the forum State and respondent strongly outweigh any contention of the inconvenience of defense in the forum state. Therefore, amicus believes that, on balance, fair play and substantial justice are served by California's exercise of jurisdiction over petitioner in the case at bench.

V.

CONCLUSION

For the reasons stated herein, amicus curiae respectfully requests that the judgment of the Supreme Court of the State of California be affirmed.

Respectfully submitted,

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APPENDIX

Overview of Global Economic Structure, With Emphasis on Japan/California/USA Interaction

This case involves a Japanese manufacturer of valve stem assemblies which sold its component part to a Taiwanese tire manufacturer for incorporation into a finished product which was then distributed to, among other markets, California. This case presents an issue of considerable significance in the context of the emerging global economy. The simplicity of the facts belie an underlying complexity in the economic realities of the technological era, the ramifications of which we are only beginning to understand. For this reason, amicus wishes to present an overview of the economic structure in which this case arises.

For the first time in three hundred years, the political and economic axis of the world is shifting away from the Atlantic Ocean to the Pacific Basin. Japan today is the center of an economic whirlwind around which swirl Hong Kong, Taiwan, South Korea, Singapore and perhaps the West Coast of the United States. Today, the Japanese, the leaders of the revolution in high technology, are invading the economies of countries everywhere, capturing huge shares of the domestic markets on every continent.

Before the death of the old Industrial Age, Japan had already emerged as the ultimate victor in the international economic game. By the middle 1970's it had caught up with, and finally surpassed, the West in the manufacture of steel, ships, machines and, of course, cars. In the new high technology age, Japan is one of the great leaders in robots, bioengineering and microelectronics. Its semiconductor industry controls the biggest chunk of the global market, and its consumer-electronics industry dominates America and Europe. (See Nussbaum, *The World After Oil*, 1983, pp. 224-225.) During the past quarter-century, Singapore, South Korea, Taiwan and Hong Kong have followed Japan's lead, riding their labor-intensive, export-led economies through what Asia scholar Lucien W. Pye calls "the longest period of rapidly rising economic growth ever experienced in human history." (*Insight*, The Washington Times, Booming Asia at the Crossroads, May 12, 1986, p. 6.)

The President's Commission on Industrial Competitiveness fears that the United States is being left behind in the escalating global competition for markets. It regards the challenge to the

long term health of the U. S. economy as serious enough to merit the creation of two new cabinet-level federal departments. America's chronic trade deficits (\$107 billion last year) represent only the tip of the iceberg. World trade, now worth some \$2 trillion annually, grew sevenfold between 1970 and 1984. National boundaries no longer shelter domestic industry: 70 percent of all goods "made in the U.S.A.," whether sold here or abroad, face foreign competition in the marketplace. (See The Wilson Quarterly, "Global Competition: The New Reality" Summer 1985 p. 42, from The President's Commission on Industrial Competitiveness.)

"Lobbying, as a form of open participation in the political process, is a concept alien to East Asians," notes Youngnok Koo, a political scientist at Seoul National University. Yet there are nearly 300 registered lobbyists from Japan, South Korean, and Taiwan in the United States capital, as well as representatives from American law and public relations firms, that look after the interests of these countries. The Japanese alone, Koo estimates, spend between \$40 and \$50 million to maintain a Washington presence, which includes not only 182 registered lobbyists but also 80 embassy staffers and emissaries from more than 65 companies and trade associations. The East Asian lobbies share a primary goal: to keep the American market open to Asian goods. Last year, the combined Japanese, Korean and Taiwanese trade surplus with the United States was \$47 billion - about one-third of the U. S. trade deficit. With the largest lobby in Washington, Japan, Koo says, "gets the most out of what there is to get in Washington." (See The Wilson Quarterly/Winter 1985 from "East Asian Lobbies in Washington: Comparative Strategies," a

paper presented by Youngnok Koo at a colloquium sponsored by the Wilson Center's East Asian Program on May 14, 1985.)

In 1977, the volume of American trade across the Pacific exceeded Atlantic trade for the first time. It now accounts for about one-quarter of all U.S. exports and one-third of all imports. Within the past 20 years, the center of world economic gravity has shifted westward. By the end of this century, the Pacific region will account for half of the world's gross national product. While U. S. consumers provided the market for Pacific trade expansion, Japan supplied the model and the momentum. Viewing the world as its marketplace, Japan averaged more than 10 percent annual GNP growth during the 60's. Its dynamic economy withstood the oil shocks of 1973 and 1978 and today holds a trade advantage of about \$148 billion over the United States. Following Japan's lead, the newly industrialized countries of Singapore, Hong Kong, Korea and Taiwan began to redirect their own economies. Farther down the Pacific, the ASEAN countries - anchored by Australia and New Zealand - are trading and investing more aggressively in the Pacific markets. Canada is also participating more actively in international trade. (See Golden State Report, May 1986, p. 10.)

**California's Top Trading Partners on the Pacific Rim
(1984, in \$ billions)**

	California exports to:	California imports from:
Japan	\$7.7	\$20.4
Taiwan	1.8	5.2
South Korea	2.8	3.6
Hong Kong	1.6	2.3
Australia	2.8	.5
Singapore	1.8	1.5

(Golden State Report, May, 1986, p. 10 [Source: Security Pacific Bank].)

To fuel its tremendous economic machine, Japan has built an organizational structure that draws out savings from its people and redirects it to industry. Japan has the highest savings rate in the industrialized world. At 18 percent it is three times the average U. S. rate of 6 percent. What has distinguished Japan from other countries in saving is the government policies that have been implemented to encourage and reinforce those habits. The government uses the Postal Savings system as a national drainage system for capital. By allowing tax-free interests on several accounts held in several names in a family, the government actively encourages people to put their cash into this national trust fund, which provides about \$40 billion a year. The government then converts it into long-term, low interest loans to industry for growth and exports. This savings structure was created by the Japanese after World War II to insure a steady flow of cheap credit to its companies. It has since provided an extra edge to Japan in world competition. For the past thirty-five years Japanese corporations have had access to extremely cheap, low-interest capital for modernizing their plants and equipment. Just as important,

Japanese companies haven't had to worry about the vagaries of the stock market when making their investment plans. They always have a great deal of debt capital to make them run and very few stockholders demanding a quick return on an investment. (See Nussbaum, *The World After Oil*, pp. 234-236.)

In an historic break with tradition, the Tokyo Stock Exchange sold seats to six foreign brokerage houses. The six new members are expected to take their seats early next year. They will be able to underwrite Japanese securities, participate in mergers, and execute their own trades, saving the 27 percent commission split they formerly paid to Japanese traders. "Tokyo's an imperative for any preeminent financial institution," says Charles Ross, chairman of Merrill Lynch International. "It's the second largest equity market in the world and is an essential component of the New York-London-Tokyo Triangle. . ." (*Fortune*, January 6, 1986, p. 8.)

"The equity markets of East Asia," says Nicholas Bratt, a managing director at the investment advisory firm of Scudder, Stevens & Clark, "provide the most attractive investment prospects of any in the world over the medium and long term." (*Fortune*, August 19, 1985, p. 225.) Governed by different legal systems and regulations, other countries permit consumers to assume more risk than in the U. S. and allow manufacturers to assume less. [The staying power of the large U. S. companies] might seem to give them an opportunity to raise prices once competitors have quit because the cost of insurance may exceed manufacturing costs. Not necessarily. In industries as diverse as light aircraft, truck wheel rims, machine tools, and industrial machinery - businesses with long-lived products - U.S. product liability law has given

foreign manufacturers the advantage. American manufacturers remain liable for their products as long as they are in use. Having recently entered the U.S. market, foreigners typically do not carry this burden. Nor do foreigners carry heavy insurance burdens at home. A recent study by the American Textile Machinery Association found that foreign manufacturers of machine tools and other hardware used in the workplace pay only 1 percent to 5 percent as much for liability insurance in their home markets. In Europe and Japan, employees rely on workers' compensation payments for workplace injuries rather than on suing. (*Fortune*, March 3, 1986, pp. 20, 23.)

Tokyo has established a kind of no-fault insurance, administered by the government, whereby automatic (though modest) compensation for victims of car accidents, defective drugs, and the like is routinely awarded. Japanese attitudes toward the law still reflect the older Confucian system, under which it was "the duty of the faithful commoner not to disturb the lord's peace by becoming too involved in a lawsuit." An obstinate commoner who pursued his grievance in court might find himself dealt with as harshly by the Judge as a guilty defendant. Thus, while Americans see the law as "a set of neutral principles that serve as an arbiter of human affairs," the Japanese see it as a source of trouble. Japan's courts impose a stiff tax on plaintiffs, and court delays - even longer than in the United States - are not entirely accidental. (*The Wilson Quarterly*/Autumn 1984, "The Role of Law and Lawyers in Japan and the United States," from transcript of a discussion sponsored by the Wilson Center's East Asia Program, June 6, 1983.)

Japanese government spending, including that by cities, accounts for 10 percent of the country's GNP. The comparable figure in the U.S. is 34 percent. By national consensus, the Japanese defense budget is held to 1 percent of GNP, or about \$13 billion currently. For that sum Japan maintains a defense force of 243,000 men, 1,050 tanks, 308 fighter planes, 107 patrol planes, 471 Surface ships, and 14 submarines. It has no bombers or carriers for long-range attack. The comparable ratio of defense to GNP is 7 percent for the U.S. (*Fortune*, September 2, 1985, pp. 86-87.)

Among the six major NATO countries the United States represents 61 percent of the GNP and 48 percent of the population, but contributes 74 percent of the defense spending and 57 percent of the active military and civilian personnel. Although these disparities may not seem large, an equal split in these two categories would reduce annual defense spending by \$47 billion and its manning levels by 488,600 people. If the rest of the NATO members and Japan are included in these calculations, then the United States would exceed its annual spending share by \$80 billion and its personnel share by 720,000. (*Foreign Policy*, Number 60 Fall, 1985, p. 108.)

In the early years of modernization in the mid-nineteenth century, the government sent thousands of Japanese abroad to learn the "secret" of industrialization. After World War II, the Ministry of International Trade and Industry (MITI) was formed. It is MITI's job to set industrial policy in Japan. In the late 1950's it was MITI that decided that consumer electronics would power Japan through the late 1960's as the wave of the future. It was MITI in the late 1970's that emphasized the need for advanced

semiconductors and sharply pared back the oil-intensive aluminum and chemical industries. And it is MITI that has now decided that Japan should have a national goal of winning for its new computer industry 30 percent of the worldwide market share and 18 percent of the U.S. market by 1990. Through JETRO, the Japan External Trade Organization, MITI has eighty offices around the world, with nine in the United States. The job of JETRO is to read all the technical material coming out of foreign countries, digest it and send it back to Japan. In Japan itself, an informal process of intense communication between MITI, the biggest corporations and the government goes on continuously. MITI is at the heart of this discussion, and distills the common themes and makes decisions on the direction of the country for future growth. MITI will publish a general policy paper outlining the technologies the country will attempt to develop and starts pumping money into research. The usual pattern is for MITI, through the Japan Development Bank, to put up \$200 million to \$300 million for a project and invite a select group of companies, who also put up their own funds, to join in. MITI's projects always focus on basic research, never on merchandising any specific product. The companies, for their part, proceed to scour the United States and Europe for information on the new technology. Once there is a sufficient pool of advanced technology available, it is shared among the participants. Intense competition then takes place as new products using the new technology are brought out. When access to the technology becomes more available, other companies enter the competition. When the most efficient companies emerge from the competition in the domestic economy, they begin to move abroad. Japan has managed to keep its huge domestic market hermetically sealed

against any foreign company that it wishes to keep at bay. Those companies invited in possess technology that Japan cannot license or purchase abroad. And even then, Japan, using the same strategy as France and other European countries, insists on trading access to its internal market for technology. By keeping the domestic market closed, the Japanese are able to raise the production volume on their new products sharply and thereby lower prices significantly. .

After detailed market research, they begin exporting. A narrow market niche is found abroad, and high-quality low-cost items are poured into it. They then move on and expand that niche, moving to capture ever more of the larger market, building greater sophistication and value-added into their products. The target is always greater market share and the time frame is always the long term. The Japanese are ferocious discounters, willing to buy their way into markets, thus opening themselves up to charges of "dumping." When the Japanese meet opposition, either commercial or political, the strategy is accommodation, and they will pull back and negotiate over market share. Part of the accommodation is the building of factories overseas to satisfy local markets. By providing jobs domestically and by getting under the tariff wires, the Japanese hope to circumvent rising protectionism against them. (Nussbaum, *The World After Oil*, pp. 240-246.)

Japan is largely the reason for world-wide over-capacity in semiconductor chips. Since Japanese companies believe that dominating chips is key to dominating the electronic industries, they have been investing in semiconductor plants at rates of 27 percent of sales for new plants and equipment vs. 18 percent for U.S. firms. In 1985, armed with huge, highly efficient factories and willing to buy market share at almost any price, they drove

every U.S. chipmaker except Texas Instruments, AT&T, and tiny Micron Technology of Boise, Idaho, out of the \$500 million a year market for the hottest selling type of D-RAM. The Japanese also stepped up their attack on the market for E-PROMs. Between January and November 1985, average prices for the fastest selling type of E-PROM dropped from \$17 to \$4. American chipmakers contend that below \$6.85, nobody makes money on E-PROMs. (*Fortune*, January 6, 1986, pp. 82, 83.)

Roughly two-thirds of U.S. exports to Japan consist of raw materials or semi-finished products, while over 85% of Japan's exports to the U.S. are finished manufactured goods - a pattern that resembles trade between a developed and developing country. Years could pass before U.S. exports to Japan contain a significantly larger share of higher value-added goods. (*Fortune*, June 10, 1985, p. 49.)

Japanese corporations have been investing heavily overseas, creating new industries and jobs. From 1951 to 1972, Japan invested \$303 million directly in U.S. and Canadian manufacturing industries. By 1982, the total rose to \$3.9 billion. It reached \$16.5 billion in March 1984. (By then, Japanese companies were majority stockholders in 300 U.S. manufacturing firms, employing 73,000 workers.) (The Wilson Quarterly/Autumn 1985, from "Japan's Real Trade Policy" by Kiyohiko Fukushima, In Foreign Policy (Summer 1985).)

In increasing numbers, Japanese corporations are either opening factories on U.S. soil or entering into joint ventures with American firms. In most cases, U.S. firms do the research and development for the product, carry out the final assembly of component parts, and handle the marketing and distribution. The

Japanese handle the complex manufacturing process in between, where they have the advantage in quality and price over their American competitors. One result is that old distinctions between Japanese and U.S. goods are blurring. An arrangement that provides American workers with jobs and U.S. consumers with inexpensive goods seems ideal. "Except for one thing," notes Robert Reich, a Harvard public-policy analyst. As the Japanese take over more and more of the production process, "they develop the collective capacity to transform raw ideas quickly into world class goods" - skill he fears that American workers and managers are losing. Most of the final assembly jobs that Japanese managers now consign to U.S. workers are relatively simple and likely to be largely eliminated by automation; research and development generates few jobs; domestic marketing and distribution are tasks that Americans would perform anyway. (Wilson Quarterly/Spring 1985, p. 20 from "Japan, U.S.A.", by Robert B. Reich, in The New Republic (Nov. 26, 1984).)

The fourth-biggest maker of American cars isn't American. It's Japan's Honda, which this year will turn out more American cars than American Motors, the perennial No. 4 up to now. Since the Japanese government will allow Honda to export only about 400,000 cars to the U.S. in 1985, and since U.S. buyers want a lot more than that, Honda can easily sell every car its Ohio factory can make - this year about 150,000. While the Big Three must periodically offer cut-rate financing to move inventory, Honda makes what many buyers consider better cars for less money. And it appears to earn a considerable profit on them. Many of Honda's American workers are young, so they aren't drawing many medical benefits or any retirement benefits yet. The total compensation of

Honda's U.S. workers is about \$14 an hour, compared with \$23 or so at the Big Three's unionized plants. Honda also uses less expensive components than U.S. makers and often gets better quality for its money. Parts representing about half the value of a U.S. built Honda are imported from Japan. To keep its edge, Honda also spends heavily on research and development - about 5 percent of gross sales, compared with an average of 4 percent for U.S. carmakers. (*Fortune*, October 28, 1985, pp. 30-32.)

The companies doing the most business in Japan usually ignore conventional wisdom. For example, speakers at seminars put on by the U.S. Department of Commerce often suggest that a company set up a wholly owned subsidiary as a base for business in Japan. But it is wiser to form a partnership with a Japanese Company. In data communications, technology doesn't get any more basic than what is called the source code, or the internal operating system that controls a machine. "Not only did we develop a partnership with a Japanese company, Japan Direx Corp., but we also gave it our source code. In short, *we gave away the store.*" (*Fortune*, January 20, 1986, "How We Sold Japan's Toughest Customer", by Thomas Alexander, senior vice president in charge of field operations for Infotron Systems Corp., a New Jersey manufacturer of data communications equipment.) (Emphasis added.)